III

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this moving defendant in that there are no allegations of an unconstitutional policy, ordinance, custom or statute of said defendant.

IV

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this moving defendant in that the County is not subject to vicarious liability.

V

The complaint, and specifically the Third and Fourth Causes of Action, fails to state facts sufficient to constitute a cause of action against this moving defendant in that direct constitutional causes of action are not proper where statutory remedies exist.

DATED: November 4, 1980

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendant
County of San Diego

///

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///

///

CALENDAR DEPARTMENT

34

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-3651

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
BUSINESS DIVISION
NOV 5 2 49 PM '80
CLERK, SAN DIEGO CO.
CALIFORNIA

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: Dec. 17, 1980
Time: 8:30 a.m.
Place: Dept. 17

COMES NOW defendant COUNTY OF SAN DIEGO and moves for a judgment on the pleadings of the complaint of plaintiffs on the following grounds:

I

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this moving defendant.

II

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this moving defendant in that each cause of action is barred by the applicable statutes of limitation.

///

CLD:sm
80-9441

Space Below for Use of Court Clerk Only

33

AUG 27 2 10 PM '80

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 00457419

WAYNE L. ARMSTRONG — Plaintiff/Petitioner

STATE OF CALIFORNIA — Defendant/Respondent

NOTICE OF RECEIPT OF TRANSFERRED CASE

TO THE HEREIN NAMED PARTIES:

NOTICE IS GIVEN UNDER C.C.P. SECTION 390 (AMENDED 1969) THAT THE ABOVE-ENTITLED ACTION WAS RECEIVED AND FILED ON 8/27/80 AFTER TRANSFER FROM ORANGE COUNTY.

ROBERT D. ZUMWALT, Clerk,

By Gwendolyn Mahomes
GWENDOLYN MAHOMES Deputy

DECLARATION OF MAILING

On the date stated below, I mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties addressed.

ROBERT D. ZUMWALT, Clerk

Dated

By Gwendolyn Mahomes, Deputy
GWENDOLYN MAHOMES

GEORGE DUKEMEJIAN
3580 WILSHIRE BOULEVARD
LOS ANGELES, CALIF, 90010

GEORGE COMROE
520 NORTH BROOKHURST
SUITE 106
ANAHEIM, CALIF. 92801

✓

FILED
BUSINESS DIVISION
AUG 22 11 37 AM '80
CLERK, SAN DIEGO CO.
CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

WAYNE L. ARMSTRONG; et al
Plaintiff/Petitioner

vs.

STATE OF CALIFORNIA, et al
Defendant/Respondent

No. 33-26-48 457419

RECEIPT FOR DOCUMENTS

NO FEE - 6103 G.C.

Received from LEE A. BRANCH, County Clerk and ex-officio clerk of the Superior Court of the State of California, in and for the County of Orange, the following:

Request for Production of Documents.
Notice of Ruling.
Response to Motion For Change of Venue.
Response to Plaintiffs Response in Opposition to Motion For Change of Venue.
Unverified Answer To Unverified Complaint.
Notice of Motion; Motion For Change of Venue; etc.
Response in Opposition To Demurrer; Points and Authorities.
Minute Order dated 6-6-80.
Notice of Hearing on Demurrer To Complaint.
Complaint.
Certified copy of Minute Order transferring Action.

RECEIPT ACKNOWLEDGED:

BY M. L. Gallegos

DATE AUG 22 1980

CASE IDENTIFICATION #

RECEIPT

FO182-95.2 (11/78)

ATTACH ORIGINAL OR TRUE COPY

Name, Address and Telephone No. of Attorney(s)

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy
County of San Diego
By C. LARRY DAVIS, Deputy
355 County Administration Center
San Diego, California 92101
(714) 236-3550
Attorney(s) for County of San Diego

Space Below For Use of Court Clerk Only

FILED
BUSINESS DIVISION
AUG 8 8 1980
ROBERT D. ZUMWALT
CLERK, SAN DIEGO COUNTY
CALIFORNIA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ~~SAN DIEGO~~ ORANGE

CASE NUMBER 332648 457419

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

I, Sally Major declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business (Residence/Business) address is 355 County Administration Center, San Diego, CA 92101 (No., Street) (City, State). I served the following document(s): ANSWERS OF DEFENDANT COUNTY OF SAN DIEGO TO FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFFS; and REQUEST FOR PRODUCTION OF DOCUMENTS

of which THE ORIGINAL DOCUMENT, OR A TRUE AND CORRECT COPY, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

George Comroe, Esq.
520 North Brookhurst,
Suite 106
Anaheim, CA 92801

Dale H. Speck, Esq.
Deputy Attorney General
3580 Wilshire Blvd.
Los Angeles, CA 90010

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego (City) California, on July 28, 19 80.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 19 80 at San Diego (Place), California.

Sally Major (Signature)

PROOF OF SERVICE BY MAIL SALLY MAJOR

Form 9A (L.A. Cth. (Rev. 11/77))

The remaining three plaintiffs are my brothers.

2. I earn gross weekly salary of $150.00. Plaintiff Elmer has gross weekly earnings of about $200.00. Plaintiff Wayne is unemployed, supported only by Social Security. Plaintiff Raymond has gross weekly earnings of about $300.00. I am not paid for time off the job, and believe Elmer is not paid for time off the job. Elmer and I are married. Neither Elmer, Wayne, nor I have any savings. None of us has any other source of income.

3. It would be a real financial hardship for us to have this matter held in a court as far away as San Diego.

Dated: June 17, 1980 Signed: Ellis M. Armstrong
ELLIS ARMSTRONG

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On 6-17-80, before me, the undersigned, a Notary Public in and for said State, personally appeared ELLIS ARMSTRONG known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Signature: P.K Feinberg

OFFICIAL SEAL
P K FEINBERG
NOTARY PUBLIC - CALIFORNIA
IMPERIAL COUNTY
My comm. expires MAY 23, 1983

GEORGE COMROE
ATTORNEY AT LAW
880 NORTH BROOKHURST, SUITE 106
ANAHEIM, CALIFORNIA 92801
(714) 635-1221

(SPACE BELOW FOR FILING STAMP ONLY)

FILED
BUSINESS DIVISION
AUG 8 2 1980
ROBERT D. ZUMWALT
CLERK, SAN DIEGO COUNTY
CALIFORNIA

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

457419

WAYNE L. ARMSTRONG; ELLIS M. ARMSTRONG; RAYMOND F. ARMSTRONG; ELMER ARMSTRONG; Plaintiffs, -vs- STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. PLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M.E. PORTER, individually and as Assistant Superintendant, Sonoma State Home; and DOES I through XX, Defendants.	CASE NO. 332648 AFFIDAVIT OF PLAINTIFF ELLIS ARMSTRONG.

Ellis Armstrong, being duly sworn, deposes and says:

1. I am a plaintiff in the above-entitled action.

DECLARATION OF SERVICE BY MAIL

Orange County Sup. Ct.
Re: Wayne L. Armstrong, etc. v. State, et al No. 332648
457419

I am over 18 years of age, and not a party to the within cause; my business address is 3580 Wilshire Boulevard, Los Angeles, California 90010; I served a copy of the attached

NOTICE OF MOTION; MOTION FOR CHANGE OF VENUE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND DECLARATION OF MERITS

on each of the following, by placing same in an envelope(s) addressed as follows:

FILED
BUSINESS DIVISION
AUG 28 1980
ROBERT D. ZUMWALT
CLERK, SAN DIEGO COUNTY
CALIFORNIA

George Comroe, Esq.
520 North Brookhurst
Suite 106
Anaheim, California 92801

Larry Davis, Esq.
County Counsel
1600 Pacific Highway
San Diego, California 92101

Each said envelope was then, on June 6, 1980, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 6, 1980, at Los Angeles, California.

Anna Lamel
Declarant

A-1
3/79

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say:

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of _____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

457419

Received copy of document described as _____

_____

on _____ 19___.

_____
(Signature)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 520 North Brookhurst, Suite 106, Anaheim, California 92801

On June 17, 19 80 I served the foregoing document described as RESPONSE TO MOTION FOR CHANGE OF VENUE.

on Adverse Counsel

in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: Anaheim, California addressed as follows:

Dale H. Speck
3580 Wilshire Boulevard
Los Angeles, California 90010

FILED
BUSINESS DIVISION
AUG 22 1980
ROBERT D. ZUMWALT
CLERK, SAN DIEGO COUNTY
CALIFORNIA

Executed on June 17, 1980 at Anaheim, California.

I declare under penalty of perjury that the foregoing is true and correct.

Diane Weed
(Signature)

STUDENT'S LEGAL SERVICE (REVISED 3-77)
May be used in Superior Court of San Diego County

the State of California.

2. I am the attorney of record for the plaintiffs in the above-entitled action.

3. I have diligently pursued and obtained evidence, including records, leading me to believe it is substantially probable that plaintiffs herein will prevail on the merits.

4. I have been advised by the four plaintiffs in this case, and on that advice and my own observations, have concluded that plaintiffs have such low economic standing as to be seriously prejudiced by the personal expense of having this case tried in San Diego. This expense does not include attorney's fees for either representation of inconvenience, but their personal travel expenses and loss of salary from jobs giving them minimal income. Affidavit of plaintiff Ellis Armstrong, attached, gives detail of said income.

On the other hand, it is my information and belief that the State of California, moving party in this motion for change of venue, has substantially unlimited funds; will not require substantial expenditure of funds because the only witness it may require is a custodian of records; and defendant State is already represented in the local area of this Court, and therefore would incur no greater expense or inconvenience in this Court.

Dated: June 17, 1980 Signed: George Comroe
GEORGE COMROE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On 6-17-80, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE COMROE known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.
WITNESS my hand and official seal.

Signature: P.K Feinberg

OFFICIAL SEAL
P K FEINBERG
NOTARY PUBLIC - CALIFORNIA
IMPERIAL COUNTY
My comm. expires MAY 23, 1983

1-1-80-0304

GEORGE COMROE
ATTORNEY AT LAW
880 North Brookhurst, Suite 106
Anaheim, California 92801
(714) 635-1251

(SPACE BELOW FOR FILING STAMP ONLY)

Attorney for Plaintiff

FILED
BUSINESS DIVISION
AUG 8 2 1980
ROBERT D. ZUMWALT
CLERK, SAN DIEGO COUNTY
CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

457419

WAYNE L. ARMSTRONG; ELLIS M. ARMSTRONG; RAYMOND F. ARMSTRONG; ELMER ARMSTRONG; Plaintiffs, -vs- STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. FLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M.E. PORTER, individually and as Assistant Superintendant, Sonoma State Home; and DOES I through XX, Defendants.	CASE NO. 332648 AFFIDAVIT OF GEORGE COMROE RE OPPOSITION TO MOTION FOR CHANGE OF VENUE.

George Comroe, being duly sworn, deposes and says:

1. I am an attorney-at-law, admitted to practice in

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

CALENDAR NO. 18 JUDGE: ROBERT H. GREEN DATE: 6/6/80

☒ ASSIGNED/TRANSFERRED CLERK: Margot Harvey DEPARTMENT: 13

FROM/TO DEPT 23 REPORTER: Ron Garritson CASE NO. 33-26-48

TITLE: ARMSTRONG VS. STATE OF CALIFORNIA 457419

ATTORNEY(S)	*FOR**		ATTORNEY(S)	*FOR**	
1. Roger Curtis	D	X	4.		
2. Gary Davis	D	X	5.		
3.			6.		

*A = Petitioner; B = Plaintiff; C = Respondent; D = Defendant; E = Cross-Complainant; F = Cross-Defendant; G = Intervenor; H = Receiver; I = Judgment Debtor; U = Real Party in Interest **Indicate Parties Appearing By Inserting "X"

FILED
CLERK SUPERIOR COURT
ORANGE COUNTY, CALIFORNIA
JUN 17 8 44 AM '80
BUSINESS OFFICE DIVISION

☐ Motion ☐ Demurrer ☐ Petition ☐ Order to Show Cause ☐ Application ☐ Entry of Judgment ☐ Other

Demurrer of def. County of San Diego to complaint

☐ Continued to ... at ... m. in Dept. ...

☐ Granted ☐ Denied ☐ Ordered Off-Calendar ☐ Taken Under Submission ☐ With ☐ Without Prejudice

COURT FINDS AND/OR ORDERS:

☐ Trial date of ... ☐ to remain;
☐ vacate and set for trial on ... at ... a.m. in Dept. ...

☐ Status conference set for ... at ... m. in Dept. ... Estimated time of trial ... days

☐ Jury ☐ not requested by*** ... ☐ Jury fees ☐ deposited 14 days prior to trial; ☐ forfeited; ☐ carried forward; ☐ refunded to*** ...

☒ Notice ☒ waived ☐ To be given by*** ...; ☐ order/judgement to be prepared by*** ...; ☐ submit to opposing counsel for approval.

☐ Grants further answers to interrogatories/Request for admissions ... within ... days. ☐ Denies as to ...

☐ The court finds failure to ... was willful and without substantial justification and imposes sanctions in the amount of ... to be paid by***

... within

☐ Sanctions denied

☐ ... deemed filed and served on all parties having prior notice.

☐ Right to attach order and writ of attachment granted in the amount of ... Writ to issue upon posting of ... bond.

☐ Demurrer sustained as to ... causes of action. ☐ ... days ☐ without leave ☐ to amend

☒ Demurrer overruled as to ... causes of action. ☒ 30 days ☐ ~~without~~ leave ☒ to answer/respond.

☐ Oral/written stipulation approved and made order of court.

☐ Bond of $ ... to be posted by ...

☐ Judgment debtor sworn for examination ☐ Bench warrant to issue and hold for ... until ... Bail set at $ ...

☐ Temporary protective/restraining order ☐ to remain in effect until continuance date; ☐ vacated.

☐ ...

STATISTICAL CODE USE ONLY	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.

LAW AND MOTION MINUTE ORDER

FORM 2-431.2 (R 12-79)

include, but not be limited to, those concerning the placement, treatment or stay of plaintiffs in or by Ruth Lipps School for Mentally Retarded Children, Sonoma State Home, Attica Prison in New York, San Quentin Prison, the State of California, the County of San Diego, San Diego County Hospital, or a Catholic orphanage. Further, said documents would include, but not be limited to, those which are referred to in an article written by Paul Nussbaum, and appearing in the July 17, 1980, San Diego edition of the Los Angeles Times, a copy of which is attached hereto for reference.

The above-described documents shall be produced for inspection and copying by defendant County of San Diego on August 25, 1980, at 10:00 a.m., at Room 355, 1600 Pacific Highway, San Diego, California 92101.

The above-described documents currently in the possession, custody or control of plaintiffs, not privileged, are relevant to the subject matter of this action, and are reasonably calculated to lead to the discovery of admissible evidence in this action.

DATED: July 28, 1980

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendant
County of San Diego

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy
County of San Diego
By C. LARRY DAVIS, Deputy

355 County Administration Center
San Diego, California 92101
(714) 236-3550

Attorneys for Defendant County of San Diego

FILED
JUL 31 1980
LEE A. BRANCH, County Clerk
By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

457419

Case No. 332648

WAYNE L. ARMSTRONG; et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: PLAINTIFFS and their attorney of record, George Comroe:

YOU ARE HEREBY REQUESTED under Code of Civil Procedure Section 2031 to produce for defendant County of San Diego the following:

1. Any and all documents, writings or photographs maintained or obtained by plaintiffs relating to their placement, treatment or stay in or at any private or governmental facility or institution from December 27, 1935, to the present. Such documents, writings and photographs would

///

CLD:sm
80-9441

DECLARATION OF SERVICE BY MAIL

Re: Wayne L. Armstrong, etc. v. State, et al. ; No. Orange County Ct. 332648

I, Anna Lomeli, declare that I am over 18 years of age, and not a party to the within cause; my business address is 3580 Wilshire Boulevard, Los Angeles, California 90010; I served a copy of the attached 457419

NOTICE OF RULING

on each of the following, by placing same in an envelope(s) addressed as follows:

FILED
BUSINESS DIVISION
AUG 22 1980
ROBERT D. ZUMWALT
CLERK SAN DIEGO COUNTY
CALIFORNIA

George Comroe, Esq.
520 North Brookhurst
Suite 106
Anaheim, California 92801

Larry Davis, Esq.
Deputy County Counsel
355 County Administration Center
San Diego, California 92101

Each said envelope was then, on July 8, 1980, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 1980, at Los Angeles, California.

Anna Lomeli
Declarant

A-2

4/75

FILED
BUSINESS DIVISION
AUG 22 11 35 AM '80
CLERK SUPERIOR COURT
LOS ANGELES, CALIFORNIA

GEORGE DEUKMEJIAN, Attorney General
STEVEN ROOD,
DALE H. SPECK,
Deputy Attorneys General
3580 Wilshire Boulevard
Los Angeles, California 90010
Telephone: (213) 736-2334

Attorneys for Defendant
State of California

FILED
JUL 9 1980
[illegible] County Clerk
By [illegible] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

457419

WAYNE L. ARMSTRONG, et al., Plaintiffs, v. STATE OF CALIFORNIA, et al., Defendants.	CASE NO. 332648 NOTICE OF RULING

TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on July 8, 1980, in Department 23 of the above entitled court, the Honorable Ronald A. Prenner, Judge, granted defendant State of California's motion to change venue in this action from Orange County Superior Court to San Diego County Superior Court.

DATED: July 8, 1980

GEORGE DEUKMEJIAN, Attorney General
STEVEN ROOD,
DALE H. SPECK,
Deputy Attorneys General

By _____
DALE H. SPECK

Attorneys for Defendant
State of California

About 1939, School was moved to Chula Vista; and years later, School in Chula Vista was permanently closed. Individual defendants and witnesses involved in the case against the County of San Diego are either dead or otherwise unavailable. The only person expected to testify for defendants involved in that portion of plaintiffs' complaint is a custodian of records. The moving party in the within motion, State of California, has no involvement in that portion of plaintiffs' complaint, and change of venue to San Diego gives neither advantage, nor removal of prejudice, to that moving defendant.

On the other hand (see attached affidavits) the four plaintiffs would be substantially prejudiced if venue here is not sustained by this Court.

CONCLUSION

Based upon the within response, and detailed affidavits attached, it is respectfully requested that this Court deny motion for change of venue sought by defendant State of California.

Dated: June 12, 1980 Signed: George Comroe
GEORGE COMROE
Attorney for Plaintiffs

1. Defendant cites Government Code § 955.2 (Page 3, lines 2-14), which indicates that proper venue is county where injury occurred. Code section also states the court may determine venue in the same manner when the State is a party as where an action is between private parties.

2. California Code of Civil Procedure § 397(3) states: The court may, on motion, change the place of trial in the following cases: ... (3) When the convenience of witnesses and the ends of justice would be promoted by the change.

Where the court is satisfied from affidavits that convenience of witnesses requires action to be tried in county in which it was brought, change of venue should be denied. Prader v. Merchant (1864) 1 CU 138.

Convenience of party may be considered on motion for change of venue where there are unusual circumstances of hardship. Edwards v. Pierson (1957) 156 CA2d 72, 318 P2d 789; Union Trust Life Ins. Co. v. Superior Court (1968) 259 CA2d 23, 66 CR 270.

Whether motion for change of venue should be granted or denied is matter within trial judge's sound discretion. International Invest. Co. v. Chagnon (1959) 175 CA2d 439, 346 P2d 209.

3. Plaintiffs' complaint alleges a long history of injuries, beginning December 27, 1935, in San Diego, California. The early injuries are alleged to have been caused by defendant County of San Diego. Plaintiffs, at that time ranging in age from ten months to four years, were placed in the county's Ruth Lipps School for Mentally Retarded Children (hereinafter School).

REBUTTAL

This has never been the law. The case cited by defendant merely holds that a Title VII case (employment discrimination) does not permit punitive damages, and a plaintiff charging Title VII violation may not add causes of action duplicating such allegation which would negate Congressional intent of Title VII by seeking punitive damages "through the back door." This defense is irrelevant here.

CONCLUSION

Plaintiffs have elected to bring action under the State, rather than the federal, Constitution; and to assert federal statutory claims charging civil conspiracy under Title 42 of the U.S. Codes §§ 1985 and 1986, since such claims are not precisely covered in the State Constitution.

Clearly, defendant's allegation that plaintiffs must choose his suggested course of action is incorrect. Exclusive federal jurisdiction is absent.

Further, plaintiffs point to the very important consideration of seeking relief through the State courts: the State of California is a named defendant, and holds 11th Amendment immunity in the federal courts; this immunity is not valid in the State court.

It is respectfully requested that this Court deny defendant's demurrer, and permit this case to proceed.

Dated: November 11, 1980 Signed: George Comroe
GEORGE COMROE
Attorney for Plaintiffs

but that they murdered to purify the race.

Plaintiffs contend that same public policy negates a statute of limitations defense here, where these defendants destroyed constitutional protections to physically, deliberately, and for inhuman purpose, prevent human procreation.

(c) Numerous applications of waiver and estoppel make it reasonable in this case to find that these defendants have no defense of a statute of limitations.

Plaintiffs contend that the alleged intentional inhuman behavior toward them by defendants implied a challenge to direct the charges to a court of law, yet concealed this possibility with an aura of lawfulness. Years of confusion in the minds of plaintiffs resulted from unlawful behavior by the very governmental agencies established to protect them.

4. The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that there are no allegations of an unconstitutional policy, ordinance, custom or statute of said defendant.

REBUTTAL

Such allegations are clear, throughout the complaint.

5. The complaint, and specifically the Third and Fourth Causes of Action, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that direct constitutional causes of action are not proper where statutory remedies exist.

Here we have four children in a government institution. They were essentially raised by the government. Despite the ongoing inhuman treatment and the pain, they reasonably believed the government's actions were lawful. This erroneous belief continued into their later life, into adult life away from the government's powerful implication of lawfulness.

It was not until they recently discussed this history with an attorney that they learned this governmental behavior was unlawful.

Plaintiffs contend the statutes of limitation did not begin to run until they learned that their injuries were unlawfully inflicted, and their complaint was then filed well within all limitations statutes.

(b) Limitations statutes, like all legislative decisions, allow exceptions when to do otherwise would seriously offend public policy.

Here the defendant Dr. M. E. Porter is alleged to have been attempting to "purify the race," with the quiet knowledge and cooperation of other defendants. This was during the European era of Hitler, and while the Nazi "purification" was condemned, it still was allegedly being practiced here in California, not by murder but by sterilization. Subsequent to filing of plaintiffs' complaint, it has been determined that, at the defendant Sonoma State Home, more than 6,000 children who were merely suspected of being mentally retarded were surgically sterilized.

Nazi war criminals are still being hunted today, with public policy absolutely prohibiting any defense of a statute of limitations. The offense charged is not that they killed in a war,

demurrer."

The court held in the case of Hopper v. Hopper (1964) 224 CA2d 446, 447, 36 CR 767, 768, that:

"At the outset is is necessary to note that the court must accept the allegation of the complaint as true since this case involves an appeal from a judgment sustaining a general demurrer." (Emphasis added).

2. The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that there are no charging allegations in the complaint.

REBUTTAL

Defendant's position is not well taken. His argument neglects to consider that while he is mentioned by name only early in the complaint, that throughout the complaint plaintiffs charge all "defendants," which clearly includes him.

3. The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that each cause of action is barred by the applicable statutes of limitation.

REBUTTAL

There are three bases for rebuttal:

(a) Case histories make it clear that a limitations statute begins to run from the time of discovery of the injury. Case histories also make it clear there is no consistent rule that determines the time of discovery of the injury.

1. The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant.

REBUTTAL

A general demurrer to a complaint will not be sustained unless it appears affirmatively on the face of the complaint or from a motion of which the court is required to or may take judicial notice that the complaint fails to state facts sufficient to constitute a cause of action.

In So. Shore Land Co. vs. Peterson (1964) 226 CA2d 725, 732, 38 CR 392, 395, the court held, "These well-defined principles include the following: 'A demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice'... Therefore, if the complaint appears to state a cause of action, a general demurrer thereto will be overruled.

Here, the complaint clearly and in great detail establishes six causes of action.

For the purpose of ruling on a general demurrer, the allegations of the complaint must be accepted as true.

The court held in the case of Stigall v. City of Taft (1962) 58 C2d 565, 567, 25 CR 441, 442, 375 P2d 289 that:

"In alleging fraud against a city council, it is not for the court to speculate how plaintiff expects to prove the frame of mind of the council's members at the time they adopted certain resolutions. The court must assume that plaintiff can prove the same. Therefore, the complaint states a cause of action against a general

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(SPACE BELOW FOR FILING STAMP ONLY)

GEORGE COMROE
ATTORNEY AT LAW
1830 West Lincoln, Suite 106
Anaheim, California 92801
(714) 635-1281

FILED
Robert O Fennell, Clerk
NOV 13 1980
BY S. McBride Deputy

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG; ELLIS M. ARMSTRONG; RAYMOND F. ARMSTRONG; ELMER ARMSTRONG; Plaintiffs, -vs- STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. FLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M.E. PORTER, individually and as Assistant Superintendant, Sonoma State Home; and DOES I through XX, Defendants.	CASE NO. 00457419 RESPONSE IN OPPOSITION TO DEMURRER; POINTS AND AUTHORITIES. Date: December 17, 1980 Time: 8:30 a.m. Place: Department 17

Plaintiffs herein respond in opposition to demurrer filed by defendant Arthur A. Flakoll:

the effectiveness of Title VII. . . ." (477 F.Supp. at 1170.)

Similarly, in the case at bar, Congress establihsed a remedial scheme to rectify alleged civil rights violations through Sections 1983, 1985 and 1986. To allow plaintiffs to also assert Bivens claims will circumvent the statutory remedy and will tend to undermine the effectiveness of the civil rights statutes.

CONCLUSION

Plaintiffs' complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted on four grounds. First, and most importantly, each cause of action is barred by the applicable statute of limitations. Second, the complaint contains no charging allegations against this defendant. Third, the complaint does not properly allege facts showing that defendant acted pursuant to a policy, custom, or practice which sanctioned alleged constitutional violations. Fourth, a right of action based directly upon constitutional amendments is inappropriate in this instance because Congress established a federal remedy to rectify the alleged wrongs through 42 U.S.C. Sections 1983, 1985 and 1986.

Accordingly, for the above-stated reasons, defendant Arthur A. Flakoll respectfully urges this court to sustain this demurrer without leave to amend.

Dated: November 4, 1980

Respectfully submitted

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendants Arthur A. Flakoll and County of San Diego

CLD:jkk
C# 80-944

Plaintiffs must particularize the facts which show that an alleged policy is the cause of the deprivation. (Smith v. Ambrogio [D. Conn. 1978] 456 F.Supp. 1130.) Without identifying or describing some unconstitutional policy, the entire complaint against defendant Flakoll fails to state facts sufficient to constitute a cause of action under section 1983.

VI

THE THIRD AND FOURTH CAUSES OF ACTION (BIVENS CLAIMS) FAIL TO STATE FACTS UPON WHICH RELIEF CAN BE GRANTED

Implication of a right of action on behalf of the plaintiffs under the Fourth and Eighth Amendments is inappropriate in the instant action. (Sobel v. Yeshiva University, supra.) Sobel involved claims alleging sex discrimination in employment brought under Title VII, Title IX, and the Fifth and Fourteenth Amendments. The court held that where the plaintiff has a federal statutory remedy, an action based directly on the Constitution is inappropriate.

> ". . . [U]nlike the situation in Davis v. Passman, [___ U.S. ___, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979)] where it was held that such a right of action could be implied on behalf of a congressional employee who, due to exclusion from coverage of Title VII, had no other remedy available, these plaintiffs have brought suit, and have a remedy available, under Title VII, a statute which was enacted specifically for this purpose. Were this Court to permit the plaintiffs to maintain their claims through implication of right of action under the Constitution, rather than by acting under Title VII, it would serve to allow them to circumvent the complex procedural and remedial scheme established by Congress to rectify alleged discrimination, and would tend to undermine

the Supreme Court held that a local governmental entity may be directly liable under Section 1983 when the injury to the plaintiff resulted from official policy. The court stated:

> ". . . [I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under section 1983." (436 U.S. at 694, 56 L.Ed.2d at 638.)

Plaintiffs, it must be assumed, attempt to invoke that authority for a direct action against the County of San Diego by alleging the following:

> "7. The defendants, and each of them, in doing all of the things herein mentioned, acted under color of law and under color of the statutes, ordinances, regulations, customs and usages of the State of California, and the aforementioned County, Home, and School." (Complaint, First Cause of Action, para. 7, at p. 3.)

> "2. Defendants Longnecker and Porter knew, or should have known by the exercise of reasonable diligence, that the behavior of each of the others was not within the duty owed to minor wards of the state, that such behavior was unlawful, that such behavior while not within written policies had become custom and practice and that such treatment would injure plaintiffs. Defendants knew, or should have known, by the exercise of reasonable diligence, that its employees and agents were inadequately trained in protecting the civil and Constitutional rights of minors entrusted into their care, and had implemented a policy, practice, and custom of depriving minors such as plaintiffs of rights guaranteed under the Constitution and laws of the United States." (Complaint, Sixth Cause of Action, para. 2, at p. 9.)

D. Application of the Various Periods of Limitations to the Case at Bar.

On its face, the complaint shows that the County of San Diego's involvement with plaintiffs began as early as December 27, 1935. (Complaint, First Cause of Action, para. 9, at pp. 3-4.) The most current date stated in the complaint is October 21, 1949. (Complaint, First Cause of Action, para. 11, at p. 5.) Furthermore, the allegations in the complaint show that the youngest plaintiff was born February 22, 1935. (Complaint, First Cause of Action, para. 9, at p. 3.) Adding twenty-one years to allow the youngest plaintiff to reach majority (Civ. Code § 25.1) equals 1956.

Clearly, this action is barred by any applicable statute of limitations. Whether a three or four-year period is applied, the plaintiffs' claims are decades too late. Public policy requires that actions be brought within a reasonable period of time. This claim exemplifies the policies behind requiring prompt adjudication of claims. Accordingly, the entire complaint should be dismissed as barred by the statute of limitations.

V

PLAINTIFFS FAIL TO PROPERLY ALLEGE ANY OFFICIAL POLICY WHICH CAUSED THEIR ALLEGED INJURIES

In the recent case of Monell v. Dept. of Social Services of the City of New York (1978) 436 U.S. 658, 56 L.Ed.2d 611,

the court determined that the "catch-all" statute for "actions not otherwise provided for" is the proper limitations period. California's "catch-all" statute of limitations is embodied in Code of Civil Procedure Section 343:

> "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued." (Emphasis added.)

However, in DeMalherbe v. Intern. Union of Elevator Constructors [N.D. Cal. 1978] 449 F.Supp. 1335, the court applied Code of Civil Procedure Section 338(1), providing for three years. The case involved a claim for discrimination in hiring based on the Fifth Amendment. The court stated:

> "There are strong reasons of federal policy for the adoption of § 338(1) for Bivens actions. Three years, the statute of limitations for § 1983 actions in California . . . is certainly long enough to satisfy the interest in a generous statute of limitations for civil rights actions, and it creates uniformity between Bivens and § 1983 actions. A single statute of limitations for all Bivens actions avoids the complexities involved in selecting a statute of limitations for each type of federal constitutional right depending on the nature of its closest state law analog.
>
> "Section 338(1) is the appropriate statute of limitations for Bivens actions because it is both sufficiently analogous to state actions covered by that provision and sufficiently consistent with the federal policies underlying Bivens actions." (449 F.Supp. at 1351.)

Thus, the consensus with respect to Bivens claims is that either a three or four-year statute of limitations is appropriate in the instant case.

1066, 1068 [§ 1983]; Briley v. State of California [9th Cir. 1977] 564 F.2d 849, 854 [§ 1983]; Griffin v. Pacific Maritime Assoc. [9th Cir. 1973] 478 F.2d 1118, 1119 [§ 1985]; Cross v. Board of Supervisors of San Mateo County [N.D. Cal. 1968] 326 F.Supp. 634, 638-639 [§ 1985].) Furthermore, the applicable statute of limitations for actions brought in California under Sections 1983 and 1985 is California Code of Civil Procedure Section 338(1), providing a three-year limitation period "upon a liability created by statute". (Id.)

B. Claims Brought Under 42 U.S.C. Section 1986.

As opposed to Sections 1983 and 1985, Section 1986 does specify the period of limitations within the statute itself. Section 1986 provides in pertinent part:

> ". . . But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action accrued." (Emphasis added.)

C. Claims Brought Under the Fourth and Eighth Amendments.

Claims based upon the assertion of a direct constitutional claim do not contain a federal statute of limitations. (Sobel v. Yeshiva University [S.D. N.Y. 1979] 477 F.Supp. 1161, 1169-1170.) Several recent cases deal with the appropriate limitations period for "Bivens" claims.

In both Beard v. Robinson [7th Cir. 1977] 563 F.2d 331, 334-338, and Bottos v. Avakian [N.D. Ind. 1979] 477 F.Supp. 610,

to trial. (See Morel v. Morel [1928] 203 Cal. 417.) In the case of Shabrick v. Moore (1961) 195 Cal.App.2d 56, the court held that there is no restriction as to the time when a motion for judgment on the pleadings must be made other than that it be made some time after the subject pleading is filed and before final judgment is rendered.

The fact that a demurrer has been made on the ground that a pleading does not state facts sufficient to constitute a cause of action and was overruled does not bar a later motion for judgment on the pleadings on the same ground. (Wrightson v. Dougherty [1936] 5 Cal.2d 257, 265; Peterson v. W. T. Grant Co. [1974] 41 Cal.App.3d 217, 223; De Gonia v. Building Material Union [1957] 155 Cal.App.2d 573, 578.) The judge who overruled the demurrer is not bound by it and may grant the motion (see Davis v. City of Santa Ana, supra). The motion may also be granted by a different judge (see Shabrick v. Moore, supra at 58).

IV

APPLICABLE STATUTES OF LIMITATION BAR PLAINTIFFS' COMPLAINT

A. Claims Brought Under 42 U.S.C. Sections 1983 and 1985.

Sections 1983 and 1985 do not contain their own periods of limitation. The general rule is that the most analogous state statute of limitations is applied. (Bradshaw v. Zoological Society of San Diego [9th Cir. 1978] 569 F.2d

and actively employed. (See e.g., Sullivan v. County of Los Angeles [1974] 12 Cal.3d 710; Stencel Aero Engineering Corp. v. Superior Court (McCarthy) [1976] 56 Cal.App.3d 978.)

The motion asks the court to rule that the subject pleading does not state facts sufficient to constitute a cause of action. (Beverage v. Canton Placer Mining Co. [1955] 43 Cal.2d 769, 772; Rannard v. Lockheed Aircraft Corp. [1945] 26 Cal.2d 149, 151; Welshans v. City of Santa Barbara [1962] 205 Cal.App.2d 304, 305.) On a motion for judgment on the pleadings the court will look only to the face of the subject pleadings (Buck v. Standard Oil Co. of California [1958] 157 Cal.App.2d 230), and cannot rely on supporting facts set forth in the form of affidavits or otherwise (Tracy v. Ferrera [1956] 144 Cal.App.2d 827; Dias v. California Employment Stabilization Comm. [1952] 113 Cal. App.2d 374). Thus, as with a general demurrer, matters outside the subject pleading may not be considered in ruling on the motion. (Welshans v. City of Santa Barbara, supra; Haggerty v. Warner [1953] 115 Cal.App.2d 468, 474; Miller v. McLaglen [1947] 82 Cal.App.2d 219, 224.)

III

A MOTION FOR JUDGMENT ON THE PLEADINGS MAY BE MADE AT ANY TIME AFTER THE ADVERSE PLEADING IS FILED AND BEFORE ENTRY OF FINAL JUDGMENT

There is no express time limitation governing the motion for judgment on the pleadings. It may be made prior

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Plaintiffs bring this action based on alleged violations of Title 42 U.S.C. Sections 1983, 1985, 1986, and the Fourth and Eighth Amendments of the United States Constitution (Bivens Claims). Plaintiffs allege that the County of San Diego, among others, violated plaintiffs' civil rights while plaintiffs were minors and wards of the court beginning in 1935. Specifically, defendant County of San Diego allegedly allowed plaintiffs to be brutally punished, sterilized, and unreasonably classified as defective or psychopathic delinquents.

On the grounds set forth below, defendant County of San Diego respectfully requests that this motion be sustained without leave to amend.

II

A MOTION FOR JUDGMENT ON THE PLEADINGS SERVES THE SAME FUNCTION AS A GENERAL DEMURRER

A motion for judgment on the pleadings has the same purpose and effect of a general demurrer. (Olson v. County of Sacramento [1969] 274 Cal.App.2d 316, 329.) While no statute expressly authorizes such a motion, its use is well-established by case law. (Barasch v. Epstein [1957] 147 Cal.App.2d 439, 440; Davis v. City of Santa Ana [1952] 108 Cal.App.2d 669, 684-685.) Such a motion is still recognized

"catch-all" statute for "actions not otherwise provided for." (See Beard v. Robinson (7th Cir. 1977) 563 F.2d 331; Bottos v. Avakian (Ind. 1979) 4 777 F.Supp. 610.

California's "catch-all" statute of limitations is Code of Civil Procedure section 343 which provides as follows:

> "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued." (Emphasis added.)

Moreover, in the case of De Malherbe v. Intern. Union of Elevator Constructors (N.D.Cal. 1978) 449 F.Supp. 1335, the court applied even a shorter statute of limitations period of three years provided in Code of Civil Procedure section 338(1). That case involved a claim for discrimination in hiring based on the Fifth Amendment. The court observed:

> "There are strong reasons of federal policy for the adoption of § 338(1) for Bivens actions. Three years, the statute of limitations for § 1983 actions in California . . . is certainly long enough to satisfy the interest in a generous statute of limitations for civil rights actions, and it creates uniformity between Bivens and § 1983 actions. A single statute of limitations for all Bivens actions avoids the complexities involved in selecting a statute of limitations for each type of

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STD 113 (REV 8-72)

". . . But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action accrued." (Emphasis added.)

D. Claims Brought Under The Fourth And Eighth Amendments Of The United States Constitution.

Claims based upon the assertion of a direct constitutional claim do not contain a federal statute of limitations. (See Sobel v. Yeshiva University (S.D.N.Y. 1979) 477 F.Supp. 1161, 1169-1170.) However, cases brought under Bivens v. Six Unknown Fed. Narcotics Agents (1971) 403 U.S. 388 are instructive, and should be determinative, on the question of the appropriate period of limitations when a claim is brought directly under a constitutional provision. As the court is well aware, the Federal Civil Rights Act, 42 U.S.C. section 1983, can be brought only against a person who by state action deprives one of a constitutional right. Bivens recognized the propriety of bringing a claim against federal action directly under the appropriate constitutional provision for a constitutional wrong. Substantive constitutional standards under a section 1983 action are to be applied to a Bivens action.

The courts have determined that the appropriate statute of limitations in a Bivens action brought directly under a constitutional provision is the appropriate state

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(1908) 154 Cal.456, 462; Bank of America v. Ames (1936) 18 Cal.App.2d 311; Berendsen v. McIver (1954) 126 Cal.App.2d 347, 351; Minton v. Cavaney (1961) 56 Cal.2d 576, 581.) The argument that a demurrer is an inappropriate method to challenge application of a statute of limitations has been rejected. (Saliter v. Pierce Brothers Mortuaries (1978) 81 Cal.App.3d 292, 299.)

B. Claims Under 42 U.S.C. Sections 1983 and 1985.

Sections 1983 and 1985 do not contain their own periods of limitation. The rule is that the most analogous statute of limitations is applied. (See Bradshaw v. Zoological Society of San Diego (9th Cir. 1978) 569 F.2d 1066, 1068 [§ 1983]; Briley v. State of California (9th Cir. 1977) 564 F.2d 849, 854 [§ 1983]; Griffin v. Pacific Maritime Assoc. (9th Cir. 1973) 478 F.2d 1118, 1119. These cases have clearly held that the applicable statute of limitations for actions brought under the Federal Civil Rights Acts (§ 1983 and § 1985) is California Code of Civil Procedure Section 338(1), providing a three-year limitation. "Upon a liability created by statute."

C. Claims Brought Under 42 U.S.C. Section 1986.

As opposed to sections 1983 and 1985, section 1986 does specify a period of limitations within the statute itself. It provides in pertinent part as follows:

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STD 113 (REV 8-72)

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

Plaintiffs bring this action alleging violations of various Federal Civil Rights Statutes, Title 42 U.S.C. sections 1983 1985, and 1986, the Fourth and Eighth Amendments of the United States Constitution, and various provisions of the California Constitution (Article 1 §§ 1 [inalienable rights], 13 [searches and seizures], and 17 [cruel and unusual punishment]. Plaintiffs allege the State of California, Sonoma State Home, and others, violated the civil rights of plaintiffs while they were minors and wards of the court beginning with a course of conduct which allegedly commenced in 1935.

I

THERE IS A FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST THESE DEMURRING DEFENDANTS AND THAT EACH CAUSE OF ACTION IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS

A. A Complaint Which Shows On Its Face That The Cause of Action Is Barred By Limitations Is Subject To Demurrer.

A complaint which shows on its face that the cause of action is barred by limitations is subject to demurrer. (See 3 Witkin, California Procedure, Pleading § 812 (2d ed. 1971). Since the statute of limitations is not a ground of special demurrer under Code of Civil Procedure section 430, it falls within the general demurrer provision of Code of Civil Procedure section 430(6). (See Burke v. Maguire

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STD. 113 (REV. 8-72)

WHEREFORE, it is respectfully requested that this demurrer be sustained without leave to amend.

DATED: November 13, 1980

GEORGE DEUKMEJIAN, Attorney General

By _____
JEFFREY T. MILLER,
Deputy Attorney General

Attorneys for Defendant
State of California

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STATE OF CALIFORNIA
STD 113 (REV 8-72)

DEMURRER TO COMPLAINT

Defendants STATE OF CALIFORNIA and SONOMA STATE HOME demur to each and every cause of action of the Complaint on the grounds:

1. There is a failure to state facts sufficient to constitute a cause of action against these demurring defendants in that each cause of action is barred by the applicable statute of limitations;

2. There is a failure to state facts sufficient to constitute a cause of action against these demurring defendants in that neither the State nor any of its agencies is liable for damages under the Federal Civil Rights legislation (42 U.S.C. § 1983, et seq.);

3. No clearly established constitutional right, recognized by the United States Supreme Court, and cognizable under 42 U.S.C. section 1983, et seq., was in existence at the times defendants allegedly acted;

4. No cause of action for damages can be stated for violation of California Constitutional Provisions as such provisions are not self-executing vehicles for damage redress.

This demurrer is based upon this notice, the points and authorities filed herewith, and the pleadings and records which constitute the file in this action.

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STD 113 REV 8 72

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FILED
BUSINESS DIVISION
NOV 14 3 [illegible]
CLERK, SAN DIEGO CO.
CALIFORNIA

NOV 17 1980

GEORGE DEUKMEJIAN, Attorney General
JEFFREY T. MILLER
Deputy Attorney General
110 West "A" Street, Suite 700
San Diego, California 92101
Telephone: (714) 237-7762

Attorneys for Defendant
State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, et al., Plaintiffs, v. STATE OF CALIFORNIA, et al., Defendants.	NO. 457419 NOTICE OF DEMURRER TO COMPLAINT; DEMURRER TO COMPLAINT; POINTS AND AUTHORITIES DATE: December 17, 1980 TIME: 8:30 A.M. DEPT: 17

TO PLAINTIFFS AND TO PLAINTIFFS' ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on Wednesday December 17, 1980, at 8:30 A.M., or as soon thereafter as the matter can be heard in Department 17 of the above-entitled court, defendants STATE OF CALIFORNIA and SONOMA STATE HOME will demur to the complaint for deprivation of rights under Title 42, U.S.C. section 1983, etc. (Complaint), and each cause of action thereof, on the following grounds:

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STATE OF CALIFORNIA
STD. 113 REV. 8-72

DEPT 17

VERIFICATION

FILED
Robert D. Zumwalt, Clerk
NOV 13 1980
BY S. McBride Deputy

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say:

I have read the foregoing _____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19___.

_____
(Signature)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 1530 W. Lincoln, Suite 106, Anaheim, California 92801

On November 11 1980 I served the foregoing document described as RESPONSE IN OPPOSITION TO DEMURRER; POINTS AND AUTHORITIES.

on _____

in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: _____

addressed as follows:

C. LARRY DAVIS, Deputy
Donald L. Clark, County Counsel
355 County Administration Center,
San Diego, California 92101

Executed on November 11, 1980 at Anaheim, California.

I declare under penalty of perjury that the foregoing is true and correct.

L. Dianne Weed
(Signature)

L. DIANNE WEED

STUART'S QUICKOK TIMESAVER (REVISED 3-71)
(May be used in California State or Federal Courts)

GEORGE DEUKMEJIAN, Attorney General
JEFFREY T. MILLER,
Deputy Attorney General
110 West "A" Street, Suite 700
San Diego, California 92101
(714) 237-7762

Attorneys for Defendant
State of California

FILED
Robert O. Zumbrun, Clerk
JAN 21 1981
BY KARON MAY
DEPUTY

ENTERED
JAN 21 1981
1327 659
Judgment Book Pg

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, et al., Plaintiffs, v. STATE OF CALIFORNIA, et al., Defendants.	NO. 457419 ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND JUDGMENT DISMISSAL THEREON

On December 17, 1980, the demurrer of Defendants State of California and Sonoma State Home came on regularly for hearing in Department 17 of the above-entitled court, the Honorable Gerald Lewis, Judge Presiding. Defendants State of California and Sonoma State Home were represented by George Deukmejian, Attorney General, by Jeffrey T. Miller, Deputy Attorney General. Plaintiffs were represented by George Comroe, Esquire.

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ATTACH ORIGINAL OR TRUE COPY

Name, Address and Telephone No. of Attorney(s)

DONALD L. CLARK, County Counsel
County of San Diego
LLOYD M. HARMON, JR., Chief Deputy
By C. LARRY DAVIS, Deputy
355 County Administration Center
San Diego, California 92101
(714) 236-3660

Attorney(s) for Defendants Arthur A. Flakoll and County of San Diego

Space Below for Use of Court Clerk Only

FILED
JAN 8 1981
Robert O. Zumwalt, County Clerk
BY KARON MAY, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER 457419

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

I, Esther L. Donahue declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business (Residence/Business) address is 355 County Administration Center, San Diego, California 92101 (No., Street / City, State) I served the following document(s): ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND; ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

of which THE ORIGINAL DOCUMENT, OR A TRUE AND CORRECT COPY, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Jeffrey T. Miller
Deputy Attorney General
110 West "A" Street, Suite 700
San Diego, CA 92101

George Comroe, Esq.
1530 West Lincoln, Suite 106
Anaheim, CA 92801

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego (City) California, on January 6, 1981.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 1981 at San Diego (Place), California.

Esther L. Donahue (Signature)
Esther L. Donahue

PROOF OF SERVICE BY MAIL

Form 98 (Rev. Civ. (Rev. 11-77))

IT IS ORDERED that the motion for judgment on the pleadings by defendant County of San Diego be and is granted without leave to amend on the ground that the Complaint fails to state facts sufficient to constitute a cause of action against said defendant in that all alleged causes of action are barred by applicable statutes of limitations.

DATED: January 8, 1988

Judge of the Superior Court

GERALD J. LEWIS

APPROVED AS TO FORM:

GEORGE COMROE, Esq.
Attorney for Plaintiffs

84

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-3651 3660

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
Robert O. Zumwalt, Clerk
JAN 8 1981
BY KARON MAY
DEPUTY

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

This matter came on regularly for hearing before this court on Wednesday, December 17, 1980, in the courtroom of Department 17, Judge Gerald Lewis, presiding, pursuant to a motion for judgment on the pleadings by defendant County of San Diego. George Comroe appeared on behalf of, and as attorney of record for, plaintiffs. C. Larry Davis, Deputy County Counsel, appeared on behalf of, and as attorney of record for, defendant County of San Diego. Jeffrey T. Miller, Deputy Attorney General, appeared on behalf of, and as attorney of record for, defendant State of California. Defendant County of San Diego having submitted points and authorities in support of its motion, oral argument having been made, the matter having been submitted, and proof made to the satisfaction of the court and good cause appearing,

CLD:eld
80-9441
1/5/81

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say:

I have read the foregoing _____ and know its contents.

■ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of _____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19___, at _____ California.

I declare under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

FILED
Robert D. Lowman, Clerk
NOV 25 1980

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19___.

_____
(Signature)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 1530 W. Lincoln, Suite 106, Anaheim, California 92801

On November 19 19 80 I served the foregoing document described as PLAINTIFFS RESPONSE IN OPPOSITION TO DEMURRER; POINTS AND AUTHORITIES, on _____ in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: _____ addressed as follows:

C. LARRY DAVIS, Deputy
355 County Adminstration Center
San Diego, California 92101

JEFFREY T. MILLER, Esq.
Deputy Attorney General
110 West "A" Street, Ste. 700
San Diego, California 92101

Executed on November 19, 19 80 at Anaheim, California.

I declare under penalty of perjury that the foregoing is true and correct.

L. Dianne Weed
(Signature)

L. DIANNE WEED

STUART & GORDON TRUE LAW (REVISED 3-77)
Only to be used in California State or Federal Courts

It is respectfully requested that this Court deny defendants' demurrer, and permit this case to proceed.

Dated: November 18, 1980 Signed: George Comroe
GEORGE COMROE
Attorney for Plaintiffs

That viewpoint has substantially disappeared, a long line of cases removing the wrongdoer's immunity defenses, until today the only public entity retaining such immunity is the State itself, and what remains of State immunity is strictly based on a still-narrow reading of the 11th Amendment. It holds that the State may not be sued, for example under 42 USC § 1983, in a federal court. That defense disappears when suit is brought in the state court.

(c) Defendants contend (Demurrer, Page 10, line 10) that no clearly established constitutional right recognizable by the U.S. Supreme Court was in existence at the times defendants allegedly acted.

Defendants' argument relies on an ex post facto theory, but is not well taken since the statute derives from an Act of April 20, 1871.

Defendants further contend (Demurrer, Page 12, line 17) that, "No cause of action for damages can be stated for violation of California constitutional provisions as such provisions are not self-executing vehicles for damage redress."

This contention considers only the exception to self-executing provisions. As stated in Winchester v. Howard (1902) 136 C 432, 439, 64 P 692, 69 P 7, and in Rose v. California (1942) 19 C2d 713, 719,123, P2d 505, "Constitutional provisions are self-executing, and will be given effect, without legislation, unless it clearly appears that this was not intended." (Emphasis added).

In the case cited by defendants, it was established that it was not intended that the 'free press' right be self-executing. This is not applicable in the case at bar.

agencies established to protect them.

2. There is a failure to state facts sufficient to constitute a cause of action against these demurring defendants in that neither the State nor any of its agencies is liable for damages under the federal Civil Rights legislation, 42 USC § 1983 et seq.

REBUTTAL

This defense raises the issue of immunity of the State.

(a) The State clearly has never had immunity from suit under the California Constitution, and plaintiffs' Complaint sues for constitutional violations.

(b) As to suit brought also under federal statutes, at least brief legislative history and intent should be examined.

Government Code § 811.2 defines the term "public entity" to include the State.

As a legal doctrine, public entity immunity lacked coherent rationale. Courts considered the need of the defendant public entity to levy taxes to create a fund to pay a tort judgment. See Hensley v. Reclamation Dist. No. 556 (1898) 121 C 96, 53 P 401. In some cases the courts considered immunity in a procedural sense through lack of consent of the public entity to being sued. See Welsbach Co. v. State (1929) 206 C 556, 275 P 436. The underlying consideration was financial burden to public entities that might seriously damage the effectiveness of public administration.

Viewing that stance with modern reasoning, those courts protected the wrongdoer, not the victim.

(b) Limitations statutes, like all legislative decisions, allow exceptions when to do otherwise would seriously offend public policy.

Here the defendant Dr. M. E. Porter is alleged to have been attempting to "purify the race," with the quiet knowledge and cooperation of other defendants. This was during the European era of Hitler, and while the Nazi "purification" was condemned, it still was allegedly being practiced here in California, not by murder but by sterilization. Subsequent to filing of plaintiffs' complaint, it has been determined that, at the defendant Sonoma State Home, more than 6,000 children who were merely suspected of being mentally retarded were surgically sterilized.

Nazi war criminals are still being hunted today, with public policy absolutely prohibiting any defense of a statute of limitations. The offense charged is not that they killed in a war, but that they murdered to purify the race.

Plaintiffs contend that same public policy negates a statute of limitations defense here, where these defendants destroyed constitutional protections to physically, deliberately, and for inhuman purpose, prevent human procreation.

(c) Numerous applications of waiver and estoppel make it reasonable in this case to find that these defendants have no defense of a statute of limitations.

Plaintiffs contend that the alleged intentional inhuman behavior toward them by defendants implied a challenge to direct the charges to a court of law, yet concealed this possibility with an aura of lawfulness. Years of confusion in the minds of plaintiffs resulted from unlawful behavior by the very governmental

PRELIMINARY STATEMENT

Defendants raise two issues: (1) that plaintiffs' action is barred by the Statute of Limitations; and (2) that the State is not liable under 42 USC §§ 1983, 1985, 1986.

1. There is a failure to state facts sufficient to constitute a cause of action against these demurring defendants and that each cause of action is barred by the applicable statute of limitations.

REBUTTAL

There are three bases for rebuttal:

(a) Case histories make it clear that a limitations statute begins to run from the time of discovery of the injury. Case histories also make it clear there is no consistent rule that determines the time of discovery of the injury.

Here we have four children in a government institution. They were essentially raised by the government. Despite the ongoing inhuman treatment and the pain, they reasonably believed the government's actions were lawful. This erroneous belief continued into their later life, into adult life away from the government's powerful implication of lawfulness.

It was not until they recently discussed this history with an attorney that they learned this governmental behavior was unlawful.

Plaintiffs contend the statutes of limitation did not begin to run until they learned that their injuries were unlawfully inflicted, and their complaint was then filed well within all limitations statutes.

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(SPACE BELOW FOR FILING STAMP ONLY)

GEORGE COMROE
ATTORNEY AT LAW
1520 West Lincoln, Suite 106
Anaheim, California 92801
(714) 635-1231

FILED
Robert D Zumwalt, Clerk
NOV 25 1980
By Deputy

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG; ELLIS M. ARMSTRONG; RAYMOND F. ARMSTRONG; ELMER ARMSTRONG; Plaintiffs, -vs- STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. FLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M.E. PORTER, individually and as Assistant Superintendant, Sonoma State Home; and DOES I through XX, Defendants.	CASE NO. 00457419 RESPONSE IN OPPOSITION TO DEMURRER; POINTS AND AUTHORITIES. Date: December 17, 1980 Time: 8:30 a.m. Place: Department 17

Plaintiffs herein respond in opposition to demurrer filed by defendants State of California and Sonoma State Home:

DECLARATION OF SERVICE BY MAIL

I, Sandra Zweig, declare:

I am over 18 years of age, and not a party to the within cause; my business address is 110 West "A" Street, Suite 600, San Diego, California 92101; I served a copy of the attached

NOTICE OF DEMURRER TO COMPLAINT; DEMURRER TO COMPLAINT; POINTS AND AUTHORITIES

on each of the following, by placing same in an envelope(s) addressed as follows:

George Comroe
Attorney at Law
1530 West Lincoln, Suite 106
Anaheim, California 92801

Larry Davis, Esq.
County Counsel
1600 Pacific Highway
San Diego, CA 92101

FILED
BUSINESS DIVISION
NOV 14 3 56 PM 1980
CLERK SAN DIEGO CO.
CALIFORNIA

Each said envelope was then, on November 13, 1980, sealed and deposited in the United States Mail at San Diego, California, the county in which I am employed, with the postage thereon fully prepaid.

I certify (declare) under penalty of perjury that the foregoing is true and correct, and this declaration was executed on November 13, 1980, at San Diego, California.

Sandra Zweig
SANDRA ZWEIG

SD CIV-2 (11/78)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this demurrer be sustained, without leave to amend, and that defendants STATE OF CALIFORNIA and SONOMA STATE HOME be dismissed from the action, with prejudice.

DATED: November 13, 1980.

GEORGE DEUKMEJIAN, Attorney General

By: Jeffrey T. Miller
JEFFREY T. MILLER,
Deputy Attorney General

Attorneys for Defendant
State of California

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 8 72)

newspaper from a specific community, and alleging, inter alia, state constitutional deprivations, the Court of Appeal recognized:

> "Moreover, we agree that the abridgement of plaintiff's state constitutional rights of free speech and free press is not self-executing in terms of providing a direct and immediate predicate for a claim for money damages. In this respect we approve and adopt the arguments of the defendants, observing further that it is the exclusive province of the Legislature to define the nature and extent of a person's entitlement to money damages available to redress his grievance arising from any deprivation of a state constitutional right." (Laguna Publishing Co. v. Golden West Publishing Corp. (1980) 110 Cal.App.3d 43, 64.)

Therefore, any attempt by plaintiffs for direct damage redress under a state constitutional provision does not set forth facts sufficient to constitute a cause of action.

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COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

Indeed, as is observed in an authoritative article on the history of the Civil Rights Act, Jaffee, Suits Against Governments and Officers: Damage Actions, 77 Har. L. Rev. 209 (1963), it was not until the case of Monroe v. Pape, 365 U.S. 167, 172-182 (1961), that the United States Supreme Court recognized and applied any substantive rights under 1983 in favoc of the person constitutionally wronged.

Simply put, at the times plaintiffs suffered the complained of wrongs, defendants had no reason to suspect they were in fact infringing constitutional rights or acting in reckless disregard of rights theretofore not established. Under such circumstances, plaintiffs cannot maintain this action against defendants STATE OF CALIFORNIA and SONOMA STATE HOME insofar as it is based upon Federal Civil Rights legislation.

IV

NO CAUSE OF ACTION FOR DAMAGES CAN BE STATED FOR VIOLATION OF CALIFORNIA CONSTITUTIONAL PROVISIONS AS SUCH PROVISIONS ARE NOT SELF-EXECUTING VEHICLES FOR DAMAGE REDRESS

Plaintiffs' attempt to recover damages for abridgement of their state constitutional inalienable rights to be free from unlawful searches and seizures and cruel and unusual punishment.

In a recent case involving a newspaper publisher who was suing responsible entities for exclusion of its

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STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws. . . .' (42 U.S.C. § 1983.)

The first inquiry in any § 1983 suit, therefore, is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'"

The United States Supreme Court hastened to observe that identification of a constitutional right allegedly infringed in a particular case is a necessary and incipient step in a § 1983 suit. (Baker v. McCollan, supra, 443 U.S. 137, 140 Cf., Paul v. Davis 424 U.S. 693, 700-701 (1976).

It was application of the above reasoning which led the United States Supreme Court, in the case of Procunier v. Navarette, 434 U.S. 555, 565-566 (1978) to observe that prison officials were not liable under § 1983 for alleged interference with outgoing mail privileges as such a right had not clearly been established by the United States Supreme Court as a constitutional right cognizable under § 1983 at the time the public officials in question acted. See also, Baker v. McCollan, supra at 139.

Diligent research has disclosed that at the respective times of the alleged wrongful acts in this case, none of the complained of activity had been recognized by the United States Supreme Court as giving rise to redress under the Federal Civil Rights legislation (42 U.S.C. § 1983, et seq.)

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STATE OF CALIFORNIA
STD 113 (REV 8-72)

Plaintiffs have named Sonoma State Home as a defendant. It has logically been determined that as the State of California is not a "person" within the meaning of the Federal Civil Rights Legislation, neither is a State agency or instrumentality. (Bennett v. People of State of California, 406 F.2d 36 (9th Cir. 1969), cert. den. 394 U.S. 966, 89 S.Ct. 1320, 22 L.Ed. 5 68; Stewart v. Minnick, 409 F.2d 826 (9th Cir. 1969).

III

NO CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT, RECOGNIZED BY THE UNITED STATES SUPREME COURT, AND COGNIZABLE UNDER 42 U.S.C. § 1983, ET SEQ. WAS IN EXISTENCE AT THE TIMES DEFENDANTS ALLEGEDLY ACTED

The United States Supreme Court, in the recent case of Baker v. McCollan 443 U.S. 137, 140 (1979), reiterated a very basic principle concerning any 42 U.S.C. section 1983 suit:

> "In any event, before the relationship between the defendant's state of mind and his liability under § 1983 can be meaningfully explored it is necessary to isolate the precise constitutional violation with which he is charged. For § 1983 imposes civil liability only upon one
>
> 'who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 8-72)

as barred by the statute of limitations.

V

PLAINTIFFS FAIL TO PROPERLY ALLEGE ANY OFFICIAL POLICY WHICH CAUSED THEIR ALLEGED INJURIES

Section 1983 provides a cause of action when the injury to the plaintiff resulted from official policy. Plaintiffs, it must be assumed, attempt to invoke that authority for a direct action against this defendant by alleging the following:

> "7. The defendants, and each of them, in doing all of the things herein mentioned, acted under color of law and under color of the statutes, ordinances, regulations, customs and usages of the State of California, and the aforementioned County, Home, and School." (Complaint, First Cause of Action, para. 7, at p. 3.)

Generally, conclusory allegations are not sufficient to state a claim under Section 1983; facts must be alleged. (Sherman v. Yakahi [9th Cir. 1977] 549 F.2d 1287, 1290.) Plaintiffs have made no attempt to in any way particularize or identify what official policy, custom, usage or guideline sanctioned the alleged constitutional violations as set forth in each cause of action. Assuming arguendo that the statute of limitation argument is not applicable, the allegations of custom or usage in the First Cause of Action, Paragraph 7, are wholly inadequate. There are no facts alleged showing that defendant Flakoll acted pursuant to a policy, custom or usage in violation of Section 1983.

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avoids the complexities involved in selecting a statute of limitations for each type of federal constitutional right depending on the nature of its closest state law analog.

> "Section 338(1) is the appropriate statute of limitations for Bivens actions because it is both sufficiently analogous to state actions covered by that provision and sufficiently consistent with the federal policies underlying Bivens actions." (449 F.Supp. at 1351.)

Thus, the consensus with respect to Bivens claims is that either a three or four year statute of limitations is appropriate in the instant case.

D. Application of the Various Periods of Limitations to the Case at Bar.

On its face, the complaint shows that defendant Arthur A. Flakoll's first involvement with plaintiffs was in February, 1936. (Complaint, First Cause of Action, para. 9, at pp. 3-4.) The most current date stated in the complaint is October 21, 1949. (Complaint, First Cause of Action, para. 11, at p. 5.) Furthermore, the allegations in the complaint show that the youngest plaintiff was born February 22, 1935. (Complaint, First Cause of Action, para. 9, at p.3.) Adding twenty-one years to allow the youngest plaintiff to reach majority (Civil Code Section 25.1) equals 1956.

Clearly, this action is barred by any applicable statute of limitations. Whether a three or four-year period is applied the plaintiffs' claims are decades too late. Public policy requires that actions be brought within a reasonable period of time. This claim exemplifies the policies behind requiring prompt adjudication of claims. Accordingly, the entire complaint should be dismissed

C. Claims Brought Under the Fourth and Eighth Amendments.

Claims based upon the assertion of a direct constitutional claim do not contain a federal statute of limitations. (Sobel v. Yeshiva University [S.D. N.Y. 1979] 477 F.Supp. 1161, 1169-1170.) Several recent cases deal with the appropriate limitation period for "Bivens" claims.

In both Beard v. Robinson [7th Cir. 1977] 563 F.2d 331, 334-338, and Bottos v. Avakian [N.D. Ind. 1979] 477 F.Supp. 610, the court determined that the "catch-all" statute for "actions not otherwise provided for" is the proper limitations period. California's "catch-all" statute of limitations is embodied in Code of Civil Procedure Section 343:

> "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued." (Emphasis added.)

However, in DeMalherbe v. Intern. Union of Elevator Constructors [N.D. Cal. 1978] 449 F.Supp. 1335, the court applied Code of Civil Procedure Section 338(1), providing for three years. The case involved a claim for discrimination in hiring based on the Fifth Amendment. The court stated:

> "There are strong reasons for federal policy for the adoption of § 338(1) for Bivens actions. Three years, the statute of limitations for § 1983 actions in California . . . is certainly long enough to satisfy the interest in a generous statute of limitations for civil rights actions, and it creates uniformity between Bivens and § 1983 actions. A single statute of limitations for all Bivens actions

IV

APPLICABLE STATUTES OF LIMITATION BAR PLAINTIFFS' COMPLAINT

A. Claims Brought Under 42 U.S.C. Sections 1983 and 1985.

Sections 1983 and 1985 do not contain their own periods of limitation. The general rule is that the most analogous state statute of limitations is applied. (Bradshaw v. Zoological Society of San Diego [9th Cir. 1978] 569 F.2d 1066, 1068 [§ 1983]; Briley v. State of California [9th Cir. 1977] 564 F.2d 849, 854 [§ 1983]; Griffin v. Pacific Maritime Assoc. [9th Cir. 1973] 478 F.2d 1118, 1119 [§ 1985]; Cross v. Board of Supervisors of San Mateo County [N. D. Cal. 1968] 326 F.Supp. 634, 638-639 [§ 1985].) Furthermore, the applicable statute of limitations for actions brought in California under Sections 1983 and 1985 is California Code of Civil Procedure Section 338(1), providing a three-year limitation period "upon a liability created by statute". (Id.)

B. Claims Brought under 42 U.S.C. Section 1986.

As opposed to Sections 1983 and 1985, Section 1986 does specify the period of limitations within the statute itself. Section 1986 provides in pertinent part:

> ". . . But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action accrued." (Emphasis added.)

part as follows:

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

* * *

"(e) The pleading does not state facts sufficient to constitute a cause of action."

III

WHERE A CAUSE OF ACTION FAILS TO CONTAIN CHARGING ALLEGATIONS AGAINST A PARTICULAR DEFENDANT, A GENERAL DEMURRER MAY LIE ON THE GROUND THAT SAID CAUSE OF ACTION FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

Defendant Arthur A. Flakoll is named in the caption of plaintiffs' complaint. Other than in the caption, defendant Flakoll is mentioned and more fully named in only paragraph 5 of the First Cause of Action (as being under the control of the State and County), and in paragraph 9 (as receiving care, custody and control of the plaintiffs). Other than these two references there are no charging allegations against Flakoll in any part of the complaint. Thus, defendant submits that plaintiffs' complaint does not purport to charge him under any of the causes of action and a general demurrer should lie (Converse v. Joslin [1959] 176 Cal.App.2d 638; Code of Civ. Proc. § 430.10(f).)

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proper where statutory remedies exist.

DATED: November 4, 1980

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendants Arthur Flakoll and County of San Diego

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Plaintiffs bring this action based on alleged violations of Title 42 U.S.C. Sections 1983, 1985, 1986, and the Fourth and Eighth Amendments of the United States Constitution (Bivens claims). Plaintiffs allege that defendant Arthur A. Flakoll, among others, violated plaintiffs' civil rights while plaintiffs were minors and wards of the court beginning in 1935. Specifically, the complaint alleges that certain of the defendants allegedly allowed plaintiffs to be brutally punished, sterilized, and unreasonably classified as defective or psychopathic delinquents.

On the grounds set forth below, defendant Arthur A. Flakoll respectfully requests that this demurrer be sustained without leave to amend.

II

A COMPLAINT THAT FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION IS DEMURRABLE ON THAT GROUND

Code of Civil Procedure Section 430.10(e) provides in

I

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant.

II

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that there are no charging allegations in the complaint.

III

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that each cause of action is barred by the applicable statutes of limitation.

IV

The complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that there are no allegations of an unconstitutional policy, ordinance, custom or statute of said defendant.

V

The complaint, and specifically the Third and Fourth Causes of Action, fails to state facts sufficient to constitute a cause of action against this demurring defendant in that direct constitutional causes of action are not

/ / /

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-3651

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
BUS NESS DIVISION
NOV 5 3 48 PM '80
CLERK, SAN DIEGO CO.
CALIFORNIA

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG; ELLIS M. ARMSTRONG; RAYMOND F. ARMSTRONG; ELMER ARMSTRONG;

Plaintiffs,

v.

STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. FLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M. E. PORTER, individually and as Assistant Superintendent, Sonoma State Home; and DOES I through XX,

Defendants.

DEMURRER TO COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: Dec. 17, 1980
Time: 8:30 a.m.
Place: Dept. 17

COMES NOW defendant ARTHUR A. FLAKOLL and demurs to the complaint of plaintiffs on the following grounds:

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granted on four grounds. First, and most importantly, each cause of action is barred by the applicable statute of limitations. Second, the complaint does not properly allege facts showing that San Diego County had a policy, custom or practice which sanctioned alleged constitutional violations. Third, the County is not subject to vicarious liability. Fourth, a right of action based directly upon constitutional amendments is inappropriate in this instance because Congress established a federal remedy to rectify the alleged wrongs through 42 U.S.C. Sections 1983, 1985 and 1986.

Accordingly, for the above-stated reasons, defendant County of San Diego respectfully urges this court to grant this motion without leave to amend.

DATED: November 4, 1980

Respectfully submitted,

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendant
County of San Diego

in employment brought under Title VII, Title IX, and the Fifth and Fourteenth Amendments. The court held that where the plaintiff has a federal statutory remedy, an action based directly on the Constitution is inappropriate.

> ". . . [U]nlike the situation in Davis v. Passman, [____ U.S. ____, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979)] where it was held that such a right of action could be implied on behalf of a congressional employee who, due to exclusion from coverage of Title VII, had no other remedy available, these plaintiffs have brought suit, and have a remedy available, under Title VII, a statute which was enacted specifically for this purpose. Were this Court to permit the plaintiffs to maintain their claims through implication of right of action under the Constitution, rather than by acting under Title VII, it would serve to allow them to circumvent the complex procedural and remedial scheme established by Congress to rectify alleged discrimination, and would tend to undermine the effectiveness of Title VII. . . ." (477 F.Supp. at 1170.)

Similarly, in the case at bar, Congress established a remedial scheme to rectify alleged civil rights violations through Sections 1983, 1985 and 1986. To allow plaintiffs to also assert Bivens claims will circumvent the statutory remedy and will tend to undermine the effectiveness of the civil rights statutes.

Accordingly, defendant requests this court to dismiss the Third and Fourth Causes of Action.

CONCLUSION

Plaintiffs' complaint fails to state facts sufficient to constitute a cause of action upon which relief can be

> the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tortfeasor--or, in other words, a municipality cannot be held liable under section 1983 on a respondeat superior theory."

In such a situation, a county or other political subdivision of a state is not a "person" for the purposes of Sections 1983, 1985 and 1986. (Monroe v. Pape [1961] 365 U.S. 167, 5 L.Ed.2d 492, as modified by Monell v. Dept. of Social Services, etc., supra; see also Bishop v. Wood [1976] 426 U.S. 341, 343, fn. 1, 48 L.Ed.2d 684, 689, fn. 1.)

As a result, each of the first two causes of action of the complaint fail to state facts sufficient to constitute a cause of action upon which relief can be granted against defendant County of San Diego. Moreover, since each constitutional cause of action is identical to the causes brought under the Civil Rights Act, the Third and Fourth Causes of Action also fail to state facts upon which relief can be granted.

VII

THE THIRD AND FOURTH CAUSES OF ACTION (BIVENS CLAIMS) FAIL TO STATE FACTS UPON WHICH RELIEF CAN BE GRANTED

Implication of a right of action on behalf of the plaintiffs under the Fourth and Eighth Amendments is inappropriate in the instant action. (Sobel v. Yeshiva University, supra.) Sobel involved claims alleging sex discrimination

(Smith v. Ambrogio [D. Conn. 1978] 456 F.Supp. 1130.) Without identifying or describing some unconstitutional policy, the entire complaint against the County is nothing more than one rooted in theories of vicarious liability, which, as discussed below, is not authorized under Section 1983. Until plaintiffs make sufficient allegations, the complaint fails to state facts sufficient to constitute a cause of action against the County under Monell.

VI

DEFENDANT COUNTY IS NOT SUBJECT TO VICARIOUS LIABILITY FOR TORTIOUS ACTS OF AGENTS OR EMPLOYEES

The complaint depicts alleged tortious incidents between plaintiffs and Ruth Lipps, Paul Longnecker and M. E. Porter. The complaint further alleges that defendants County of San Diego and State of California operated, supervised and controlled defendants Ruth Lipps, Ruth Lipps School for Mentally Retarded Children, and Arthur Flakoll. (Complaint, First Cause of Action, para. 5, at p. 3.) However, even though plaintiffs allege a relationship between the above defendants and the County, the County cannot be liable simply because it employs a tortfeasor.

Specifically, in Monell v. Dept. of Social Services, etc., supra, the United States Supreme Court stated at page 691:

> "On the other hand, the language of section 1983, read against the background of the same legislative history, compels

Generally, conclusory allegations are not sufficient to state a claim under Section 1983; facts must be alleged. (Sherman v. Yakahi [9th Cir. 1977] 549 F.2d 1287, 1290.) Plaintiffs have made no attempt to in any way particularize or identify what official County policy or guideline sanctioned the alleged constitutional violations as set forth in each cause of action. There is quite a difference between injury caused by implementation of a policy and injury caused by abuse of or deviation from a policy. Monell authorizes a direct action against the entity for the former, but not the latter. (See, e.g., LaRocco v. City of New York (E.D. N.Y. 1979] 468 F.Supp. 218; see also Lodermeier v. City of Sioux Falls [D.S.D. 1978] 458 F.Supp. 1202.)

Assuming arguendo that the statute of limitation argument is not applicable, the allegations of custom or usage in the First Cause of Action, Paragraph 7, are wholly inadequate. There are no facts alleged showing that the County of San Diego, through its lawmakers or those representing official policy, engaged in a policy, custom or usage in violation of Section 1983. Furthermore, the allegations contained in the Sixth Cause of Action, Paragraph 2, only generally state that Longnecker's and Porter's behavior was unlawful and represented a custom and practice which deprived plaintiffs of their constitutional rights.

Plaintiffs must particularize the facts which show that an alleged County policy is the cause of the deprivation.

pp. 5-6.) The most current date attributed to any alleged act of wrongdoing, as set forth in the Complaint, is October 21, 1949. (Complaint, First Cause of Action. par. 11, at p. 5.)

This entire action is clearly barred by any applicable statute of limitations. Plaintiffs have simply sought redress decades too late. Public policy requires that actions be brought within a reasonable period of time. Both the law, and the underlying policies requiring a prompt adjudication of claims cannot countenance this being a viable action in 1980.

II

THERE IS A FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION AGAINST THESE DEMURRING DEFENDANTS IN THAT NEITHER THE STATE NOR ANY OF ITS AGENCIES IS LIABLE FOR DAMAGES UNDER THE FEDERAL CIVIL RIGHTS LEGISLATION, 42 U.S.C. SECTION 1983, ET SEQ.

The United States Supreme Court has long observed that a state is not liable for damages under the Federal Civil Rights Act (42 U.S.C. § 1983). (See Quern v. Jordan (1979) 440 U.S. 332; Monell v. New York, Dept. of Social Services, etc. (1978) 436 U.S. 658; Mt. Healthy City Board of Ed. v. Doyle (1977) 429 U.S. 274, 280; Edelman v. Jordan (1974) 415 U.S. 651. Nor, logically, is a state liable under 42 U.S.C. section 1985 or 1986 as those statutes also proscribe state action.

/

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 8-72)

federal constitutional right depending on the nature of its closet state law analogue.

"Section 338(1) is the appropriate statute of limitations for Bivens actions because it is both sufficiently analogous to state actions covered by that provision and sufficiently consistent with the federal policies underlying Bivens actions." (449 F.Supp. at 1351.)

Clearly, the law is that no action brought against a federal official or employee for violation of a constitutional right is viable after four years. Even assuming plaintiffs can bring a direct action under the federal constitutional provisions without being limited by section 1983, the appropriate statute of limitations could be no longer than four years under any analysis.

E. Application Of The Various Periods Of Limitation To The Present Case Bar This Action.

On its face, the Complaint shows the action is barred as to defendants State of California and Sonoma State Home.

All plaintiffs were born between 1931 and 1935 (Complaint, First Cause of Action, par. 9, p. 3.) Plaintiffs were declared wards of the court in 1936. (Complaint, First Cause of Action par. 9, at p. 4.) It is alleged that between 1939 and 1949, each of the plaintiffs suffered various wrongs, constitutional and otherwise. (Complaint, First Cause of Action, pars. 10, 11 and 12 at

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 8-72)

13 2. County of San Diego's Demurrer to Complaint and Memorandum of Points and Authorities in Support Thereof dated May 21, 1980;

6 3. Plaintiffs' Response in Opposition to Demurrer; Points and Authorities dated May 29, 1980;

2 4. Clerk's Notice of Receipt of Transferred Case dated August 27, 1980;

14 5. County of San Diego's Motion for Judgment on the Pleadings and Memorandum of Points and Authorities in Supoort Thereof dated November 4, 1980;

10 6. County of San Diego's Demurrer to Complaint and Memorandum of Points and Authorities in Support Thereof dated November 4, 1980;

6 7. Plaintiffs' Response in Opposition to Demurrer; Points and Authorities dated November 11, 1980;

14 8. State of California's Notice of Demurrer to Complaint; Demurrer to Complaint; Points and Authorities dated November 13, 1980;

6 9. Plaintiffs' Response in Opposition to Demurrer; Points and Authorities dated November 18, 1980;

2 10. County of San Diego's Order Granting Motion for Judgment on the Pleadings Without Leave to Amend, filed January 8, 1981;

2 11. County of San Diego's Order Sustaining Demurrer Without Leave to Amend, filed January 8, 1981;

2 12. Clerk's Notice of Entry of Judgment dated January 22, 1981, Book 1327, Page 659;

1 13. Notice of Order Sustaining Demurrer Without Leave

MARC CREIGHTON BLOCK
Counselor at Law
Goldenwest Professional Center
17161 Goldenwest St., Suite C
Huntington Beach, CA 92647

(714) 848-4777

Counsel for PLAINTIFF/APPELLANTS
WAYNE L. ARMSTRONG, ELLIS M.
ARMSTRONG, RAYMOND F. ARMSTRONG,
and ELMER ARMSTRONG

FILED
MAR 27 1981

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, et al., Plaintiffs and Appellants, -vs- STATE OF CALIFORNIA, et al. Defendants and Respondents.	No. 457419 APPELLANTS' NOTICE TO PREPARE REPORTER'S AND CLERK'S TRANSCRIPTS AND DESIGNATION OF CONTENTS THEREOF [CAL.RULES OF CT., RULES 4(a),(b), 5(a)]

TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN that WAYNE L. ARMSTRONG, ELLIS M. ARMSTRONG, RAYMOND F. ARMSTRONG, and ELMER ARMSTRONG, plaintiffs/appellants in the above-entitled action filed their Notice of Appeal and request that a reporter's transcript on appeal herein be prepared and include all oral proceedings on December 17, 1980.

You are further requested to prepare clerk's transcript on appeal herein, which shall include the following described items:

1. Complaint (Orange County Superior Court Case No. 332648;

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL-FOURTH APP. DIST.
FILED
MAR 24 1981
ROBERT L. [illegible] Clerk
R. J. Smith
DEPUTY CLERK

DIVISION ONE

WAYNE L. ARMSTRONG, ET AL,
Plaintiffs-Appellants,
vs.
STATE OF CALIFORNIA, ET AL,
Defendants-Respondents.

4 Civil No. 24502

SUPERIOR COURT NO. 457419

FILED
Robert D. Zimmerman, Clerk
MAR 30 1981
DEPUTY

THE COURT:

Appellants' motion for relief from default under Rules 4a and 5a, California Rules of Court, is granted and the County Clerk, County of San Diego, is directed to accept a notice to prepare Clerk's and Reporter's Transcript if tendered within ten days.

Stanioth
Acting Presiding Justice

Copies to: Marc Creighton Block, Esq.-
Huntington Beach
Attorney General-SD
(Attn: Mr. Jeffrey T. Miller, Deputy)
Superior Court-SD

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL - FOURTH DIST.
FILED
MAR 24 1981
ROBERT L. FORD, Clerk
DEPUTY CLERK

DIVISION ONE

WAYNE L. ARMSTRONG, ET AL.,
Plaintiffs-Appellants,
vs.
STATE OF CALIFORNIA, ET AL.,
Defendants-Respondents.

4 Civil No. 24502

SUPERIOR COURT NO. 457419

MAR 27 1981

THE COURT:

Appellants' motion for relief from default under Rules 4a and 5a, California Rules of Court, is granted and the County Clerk, County of San Diego, is directed to accept a notice to prepare Clerk's and Reporter's Transcript if tendered within ten days.

Stanioth
Acting Presiding Justice

Copies to: Marc Creighton Block, Esq.-
Huntington Beach
Attorney General-SD
(Attn: Mr. Jeffrey T. Miller, Deputy)
Superior Court-SD

County of San Diego

ROBERT D. ZUMWALT
County Clerk, Ex Officio Clerk of Superior Court
County Courthouse, 220 West Broadway
P.O. Box 128, San Diego, California 92112

March 3, 1981

Marc Creighton Block
17161 Goldenwest St., Ste C
Huntington Beach, CA92647

No. 457419
(4 Civil No. 28523

Dear Sir:

Regarding the appeal filed in the above entitled case, you are hereby notified that:

[X] Notice Designating the Record on Appeal was not timely filed as required by Rule 5(a), California Rules of Court. (Due February 27, 1981)

[ ] Deposit of payment for appeal transcripts has not been made as required by Rule 5(c), California Rules of Court. (Due)

Also, no Proof of Mailing was attached

The appeal will be dismissed unless good cause as shown to the reviewing court within 15 days from the mailing of this notice. [Rule 10(c), California Rules of Court, effective July 1, 1977]

Very truly yours,

ROBERT D. ZUMWALT,
County Clerk

By Phyllis G. Hill
Appeals Clerk

cc: Court of Appeal
George Dukemejian, Attny. General

APPEALS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, et al
Plaintiff

vs

STATE OF CALIFORNIA,
SONOMA STATE HOME
Defendants

No. 457419

NOTICE OF FILING

FEB 17 1981

TO:
ATTORNEY GENERAL
JEFFREY T. MILLER, DEPUTY
110 West A Ste, Ste 700
San Diego, CA 92101

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that in the above entitled matter

☐ ABANDONMENT OF APPEAL XXX NOTICE OF APPEAL from the

Order sustaining demurrer without leave to amend and judgment dismissal thereon entered January 22, 1981
was filed in this office on Feb. 17, 1981 , 19____, by

Marc Creighton Block, attorney for plaintiffs/appellants

DATED Feb. 17, 1981

ROBERT D. ZUMWALT, County Clerk
By _____ Deputy

CERTIFICATE OF MAILING

I, ROBERT D. ZUMWALT, Clerk of the Superior Court, do hereby certify that on the date shown below, at San Diego, California, I placed a true copy of the above Notice of Filing in a separate envelope addressed to each addressee as listed above and each envelope was then sealed and deposited in the mail with postage fully prepaid.

DATED Feb 17, 1981

ROBERT D. ZUMWALT, County Clerk
By _____ Deputy

FORM 334 Co. Clk. (5-79)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

FILED
FEB 4 1982
D. WAGNER, Deputy

WAYNE L. ARMSTRONG
RAYMOND L. ARMSTRONG
ELLIS ARMSTRONG AND
ELMER ARMSTRONG

vs

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

No. 457419

NOTICE RE FEE FOR CLERK'S AND REPORTER'S TRANSCRIPT ON APPEAL

TO:

RAYMOND L. ARMSTRONG & Wayne L. Armstrong
Attorney In Pro Per
3444 Gardens Avenue # 2
Los Angeles, Ca 90039

APPELLANT:

Appellant's fee for preparation and certifying original and one copy of the Record on Appeal in the above entitled action is:

Reporter's Transcript:	$	20.00
Clerk's Transcript:	$	88.20
TOTAL	$	108.20

Deposit of above amount due no later than February 16, , 1982. (Rule 5(c) California Rules of Court).

RESPONDENT:

If Respondent has requested exhibits, declarations or affidavits to be copied, cost to have same included in the record is $ n/a . (California Rules of Court, 5(b) (c))

If deposits are made, transcripts will be prepared and notification given upon their completion.

Checks to be made payable to "County Clerk".

DATE FEBRUARY 4, 1982

ROBERT D. ZUMWALT, County Clerk

By D. Wagner Deputy

CERTIFICATE OF MAILING

I, ROBERT D. ZUMWALT, Clerk of the Superior Court, do hereby certify that on the date shown below, at San Diego, California, I placed a true copy of the above Notice Re Fee For Clerk's and Reporter's Transcript on Appeal in a separate envelope addressed to each addressee as listed above and each envelope was then sealed and deposited in the mail with the postage fully prepaid.

DATE February 4, 1982

ROBERT D. ZUMWALT, County Clerk

By D. Wagner Deputy

FORM 333 Co. Clk. (5-79)

Space Below for Use of Court Clerk Only

FILED

FEB 2 8 04 AM '81

ROBERT D. ZUMWALT
COUNTY CLERK

RR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419
CASE NUMBER

Plaintiff/Petitioner

WAYNE L ARMSTRONG, et al

Defendant/Respondent

STATE OF CALIFORNIA, et al

NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER
(Section 664.5 C.C.P.)

JUDGMENT OF DISMISSAL AFTER ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

☒ Judgment has been entered in the above action, as follows:

DATE	BOOK	PAGE	JUDGE
1/29/81	1329	264	GERALD J LEWIS

☐ An order has been signed and filed in the above action:

DATE	JUDGE

Robert D. Zumwalt
CLERK

DECLARATION OF MAILING

On the date stated below, I caused to be mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties, addressed.

Dated ~~22~~ 2/2/81 (3)

Robert D. Zumwalt
CLERK

GEORGE COMROE
~~1619~~ 1530 WEST LINCOLN STE 106
ANAHEIM CA 92801

Form 117 Co. Clk

95

Space Below for Use of Court Clerk Only

FILED

FEB 2 8 04 AM '81

ROBERT D. ZUMWALT
COUNTY CLERK

RR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419
CASE NUMBER

Plaintiff/Petitioner

WAYNE L ARMSTRONG, et al

Defendant/Respondent

STATE OF CALIFORNIA, et al

NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER
(Section 664.5 C.C.P.)

JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

☐ Judgment has been entered in the above action, as follows:

XXX

DATE	BOOK	PAGE	JUDGE
1/29/81	1329	263	GERALD J LEWIS

☐ An order has been signed and filed in the above action:

DATE	JUDGE

Robert D. Zumwalt
CLERK

DECLARATION OF MAILING

On the date stated below, I caused to be mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties, addressed.

Dated 2/2/81 (3)

Robert D. Zumwalt
CLERK

DONALD L CLARK, CO COUNSEL
C LARRY DAVIS, DEPUTY
A-12

JEFFREY T MILLER
DEPUTY ATTY GEN
110 WEST A ST STE 700
SAN DIEGO CA 92101

Form 117 Co. Clk.

97

Space Below for Use of Court Clerk Only

FILED

FEB 2 8 04 AM '81

RR ROBERT D. ZUMWALT COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419

CASE NUMBER

Plaintiff/Petitioner

WAYNE L ARMSTRONG, et al

Defendant/Respondent

STATE OF CALIFORNIA, et al

NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER
(Section 664.5 C.C.P.)

JUDGMENT OF DISMISSAL AFTER ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

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Dated 2/2/81 (3)

Robert D. Zumwalt
CLERK

DONALD L CLARK, CO COUNSEL
C LARRY DAVID, DEPUTY
A-12

JEFFREY T MILLER
DEPUTY ATTY GEN
110 WEST A ST STE 700
SAN DIEGO CA 92101

Form 117 Co. Clk.

Space Below for Use of Court Clerk Only

FEB 2 8 04 AM '81

RR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419
CASE NUMBER

Plaintiff/Petitioner
WAYNE L ARMSTRONG, et al

Defendant/Respondent
STATE OF CALIFORNIA, et al

NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER
(Section 664.5 C.C.P.)

JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

☒ Judgment has been entered in the above action, as follows:

DATE	BOOK	PAGE	JUDGE
1/29/81	1329	263	GERALD J LEWIS

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DATE	JUDGE

Robert D. Zumwalt
CLERK

DECLARATION OF MAILING

On the date stated below, I caused to be mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties addressed.

Dated 2/2/81 (3)

Robert D. Zumwalt
CLERK

GEORGE COMROE
1530 WEST LINCOLN STE 106
ANAHEIM CA 92801

✓

Form 117 Co. Clk.

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-~~3654~~ 3660

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
Robert L. Zumwalt, Clerk
JAN 26 1981
BY KARON MAY
deputy

CALENDAR DEPARTMENT

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et a.,

Defendants.

JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

ENTERED
JAN 29 1981
Judgment Book 1329 Pg 263

WHEREAS, defendant Arthur A. Flakoll's Demurrer to plaintiffs' Complaint has been sustained without leave to amend after hearing in Department 17, on December 17, 1980; and

WHEREAS, said Order Sustaining Demurrer was rendered on January 8, 1981, and plaintiffs were served notice of said ruling on January 26, 1981, and application has been made to the Clerk of this Court for entry of judgment in favor of defendant Arthur A. Flakoll and against plaintiffs, and good cause appearing:

IT IS ORDERED, ADJUDGED AND DECREED that this action be and the same is dismissed with prejudice as to Arthur A. Flakoll, and plaintiffs are to take nothing from said defendant by this action.

DATED: JAN 28 1981

Gerald J. Lewis

Judge of the Superior Court

GERALD J. LEWIS

CLD:eld
80-9441
1/21/81

ATTACH ORIGINAL OR TRUE COPY

DONALD L. CLARK, County Counsel
County of San Diego
LLOYD M. HARMON, JR., Chief Deputy
By C. LARRY DAVIS, Deputy
355 County Administration Center
San Diego, CA 92101
(714) 236-3660
Attorney(s) for Defendants Arthur A. Flakoll and County of San Diego

FILED
Robert O. Bellwood, Clerk
JAN 28 1981
BY KARON MAY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER 457419

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

I, Esther L. Donahue declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 355 County Administration Center, San Diego, CA 92101 (No., Street / City, State). I served the following document(s): JUDGMENT OF DISMISSAL AFTER ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND; JUDGMENT OF DISMISSAL AFTER ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND of which THE ORIGINAL DOCUMENT, OR A TRUE AND CORRECT COPY, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Jeffrey T. Miller
Deputy Attorney General
110 West "A" Street
Suite 700
San Diego, CA 92101

George Comroe, Esq.
1530 West Lincoln
Suite 106
Anaheim, CA 92801

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego (City), California, on January 26, 1981.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 1981 at San Diego (Place), California.

Esther L. Donahue (Signature)
Esther L. Donahue

PROOF OF SERVICE BY MAIL

MARC CREIGHTON BLOCK
Counselor at Law
Goldenwest Professional Center
17161 Goldenwest St., Suite C
Huntington Beach, CA 92647

Telephone: (714) 848-4777

Counsel for PLAINTIFFS/APPELLANTS

FILED
BUSINESS DIVISION
MAR 2 1 52 PM '81
ROBERT D. ZUMWALT
CLERK, SAN DIEGO CO.
CALIFORNIA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, et al.,
Plaintiffs/Appellants,
-vs-
STATE OF CALIFORNIA, et al.,
Defendants/Respondents.

CASE NO. 457419

PROOF OF SERVICE BY MAIL

ANNEDORE W. SCHWEERS declares:

I am a resident of Orange County, CA; I am over the age of eighteen years and not a party to the within-entitled action; my business address is 17161 Goldenwest, Suite C, Huntington Beach, CA 92647. On 2/26/81 I served a copy of APPELLANTS' NOTICE TO PREPARE REPORTER'S AND CLERK'S TRANSCRIPTS AND DESIGNATION OF CONTENTS on the interested parties THEREOF [CAL.RULES OF CT, RULES 4(a),(b), 5(a)] in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Huntington Beach, CA, addressed as follows:

C. Larry Davis, Deputy County Counsel
DONALD L. CLARK, COUNTY COUNSEL
355 County Administration Center
San Diego, CA 92101

JEFFREY T. MILLER, Deputy Attorney General
GEORGE DEUKMEJIAN, Attorney General
110 West "A" Street, Suite 700
San Diego, CA 92101

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on 2/26/81, at Huntington Beach, California.

ANNEDORE W. SCHWEERS

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, }
County of _____ } ss.

I, the undersigned, say: I am the _____

_____

_____

in the above entitled action; I have read the foregoing _____

_____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

_____

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ (date) *at* _____ (place), *California*

_____ (Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF ORANGE } ss.

I am a resident of/employed in the county aforesaid, I am over the age of eighteen years and not a party to the within entitled action; my business address/~~residence~~ address is:

17161 Goldenwest, Suite C, Huntington Beach, CA 92647

On February 10 , 19 81 , *I served the within* NOTICE OF APPEAL

_____

on the INTERESTED PARTIES

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at HUNTINGTON BEACH, CA *addressed as follows:*

MR. C. LARRY DAVIS
Deputy County Counsel
355 County Administration Center
San Diego, CA 92101

MR. JEFFREY T. MILLER
Deputy Attorney General
110 West "A" St., Suite 700
San Diego, CA 92101

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on February 10, 1981, (date) *at* Huntington Beach (place), *California*

A. W. SCHWEERS (Signature)

**Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.*

WOLCOTT'S 811P Rev 2 76

ARMSTRONG, appeal from ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND JUDGMENT DISMISSAL THEREON entered herein on January 22, 1981, Book 1327, Page 659, Judge Gerald L. Lewis.

DATED: February 10, 1981.

MARC CREIGHTON BLOCK
Counsel for WAYNE L. ARMSTRONG, ELLIS M. ARMSTRONG, RAYMOND F. ARMSTRONG, ELMER ARMSTRONG.

MARC CREIGHTON BLOCK
Counselor at Law
Goldenwest Professional Center
17161 Goldenwest St., Suite C
Huntington Beach, CA 92647

Telephone: (714) 848-4777

Counsel for PLAINTIFFS

FEB 17 1981

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

WAYNE L. ARMSTRONG, ELLIS M. ARMSTRONG, RAYMOND F. ARMSTRONG, and ELMER ARMSTRONG, Plaintiffs, -vs- STATE OF CALIFORNIA; COUNTY OF SAN DIEGO; SONOMA STATE HOME; RUTH LIPPS SCHOOL FOR MENTALLY RETARDED CHILDREN; ARTHUR A. FLAKOLL, individually and as Chief Probation Officer, County of San Diego; RUTH LIPPS, individually and as Director of the Ruth Lipps School for Mentally Retarded Children; EARL BLACK, individually and as a management employee for Sonoma State Home; PAULINE LONGNECKER, individually and as a management employee for Sonoma State Home; M.E. PORTER, individually and as Assistant Superintendant, Sonoma State Home; and DOES I through XX, inclusive, Defendants.	CASE NO. 00457419 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiffs WAYNE L. ARMSTRONG, ELLIS M. ARMSTRONG, RAYMOND F. ARMSTRONG, and ELMER

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-~~2651~~ 3660

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
Robert D. Zumwalt, Clerk
JAN 26 1981
BY AARON MAY, Deputy

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et a.,

Defendants.

JUDGMENT OF DISMISSAL AFTER ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

ENTERED
JAN 29 1981
Judgment Book 1329 Pg 264

WHEREAS, defendant County of San Diego's Motion for Judgment on the Pleadings has been sustained without leave to amend after hearing in Department 17, on December 17, 1980; and

WHEREAS, said order granting the Motion was rendered on January 8, 1981, and plaintiffs were served notice of said ruling on January 26, 1981, and application has been made to the Clerk of this Court for entry of judgment in favor of defendant and against plaintiffs, and good causing appearing:

IT IS ORDERED, ADJUDGED AND DECREED that this action be and the same is dismissed with prejudice as to the County of San Diego, and plaintiffs are to take nothing from said defendant by this action.

DATED: JAN 28 1981

Gerald J. Lewis
Judge of the Superior Court
GERALD J. LEWIS

CLD:eld
80-9441
1/21/81

Space Below for Use of Court Clerk Only

FILED

JAN 26 8 07 AM '81

ROBERT D. ZUMWALT
COUNTY CLERK

RR

94

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419
CASE NUMBER

Plaintiff/Petitioner	NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER (Section 664.5 C.C.P.)
WAYNE L ARMSTRONG, et al	
Defendant/Respondent	ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND JUDGMENT DISMISSAL THEREON
STATE OF CALIFORNIA, ET AL	

☒ Judgment has been entered in the above action, as follows:

DATE	BOOK	PAGE	JUDGE
1/22/81	1327	659	gerald j lewis

☐ An order has been signed and filed in the above action:

DATE	JUDGE

Robert D. Zumwalt
CLERK

DECLARATION OF MAILING

On the date stated below, I caused to be mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties, addressed.

Dated 1/26/81 (3)

Robert D. Zumwalt
CLERK

GEORGE COMROE
1530 WEST LINCOLN STE 106
ANAHEIM CA 92801

Form 117 Co. Clk.

90

Space Below for Use of Court Clerk Only

FILED

JAN 26 8 07 AM '81

ROBERT B. ZUMWALT
COUNTY CLERK

RR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

457419

CASE NUMBER

Plaintiff/Petitioner

WAYNE L ARMSTRONG, et al

Defendant/Respondent

STATE OF CALIFORNIA, et al

NOTICE OF ENTRY OF JUDGMENT OR SIGNING OF AN ORDER
(Section 664.5 C.C.P.)

ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND JUDGMENT DISMISSAL THEREON

☒ Judgment has been entered in the above action, as follows:

DATE	BOOK	PAGE	JUDGE
1/22/81	1327	659	GERALD J LEWIS

☐ An order has been signed and filed in the above action:

DATE	JUDGE

Robert D. Zumwalt
CLERK

DECLARATION OF MAILING

On the date stated below, I caused to be mailed (by first-class mail or airmail, postage prepaid) a copy of this Notice to the parties addressed.

Dated 1/26/81 (3)

Robert D. Zumwalt
CLERK

GEORGE DEUKMEJIAN, ATTY GEN
JEFFREY T MILLER, DEPUTY
110 WEST A ST STE 700
SAN DIEGO CA 92101

√

DONALD L CLARK, COUNTY COUNSEL
C LARRY DAVIS, DEPUTY
A-12

Form 117 Co. Ctn.

ATTACH ORIGINAL OR TRUE COPY

Name, Address and Telephone No. of Attorney(s)
DONALD L. CLARK, County Counsel
County of San Diego
LLOYD M. HARMON, JR., Chief Deputy
By C. LARRY DAVIS, Deputy
355 County Administration Center
San Diego, CA 92101
(714) 236-3660
Attorney(s) for Defendants Arthur A. Flakoll and County of San Diego

Space Below for Use of Court Clerk Only

FILED
BUSINESS DIVISION
JAN 26 3 20 PM '81
CLERK, SAN DIEGO CO.
CALIFORNIA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER 457419

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

I, Esther L. Donahue declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed (Residing/Employed) in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business (Residence/Business) address is 355 County Administration Center, San Diego, CA 92101 (No. Street / City, State). I served the following document(s): NOTICE OF ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

of which THE ORIGINAL DOCUMENT, OR A TRUE AND CORRECT COPY, is attached, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Jeffrey T. Miller
Deputy Attorney General
110 West "A" Street
Suite 700
San Diego, CA 92101

George Comroe, Esq.
1530 West Lincoln
Suite 106
Anaheim, CA 92801

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at San Diego (City), California, on January 26, 1981.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 1981, at San Diego (Place), California.

Esther L. Donahue (Signature)

Esther L. Donahue

PROOF OF SERVICE BY MAIL

92

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-8651 3660

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
BUSINESS DIVISION
JAN 26 3 23 PM '81
CLERK SUPERIOR COURT
SAN DIEGO CO.
CALIFORNIA

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et a.,

Defendants.

NOTICE OF ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND AND GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND

TO: Plaintiffs and their attorney of record, George Comroe:

NOTICE IS HEREBY GIVEN that on January 8, 1981, the Court sustained without leave to amend defendant Arthur A. Flakoll's Demurrer to plaintiffs' Complaint on the grounds set forth therein, and granted defendant County of San Diego's Motion for Judgment on the Pleadings Without Leave to Amend.

DATED: January 26, 1981

DONALD L. CLARK, County Counsel
LLOYD M. HARMON, JR., Chief Deputy

By C. Larry Davis
C. LARRY DAVIS, Deputy
Attorneys for Defendants Arthur A. Flakoll and County of San Diego

CLD:eld
80-9441
1/21/81

IT IS ORDERED that the demurrer of defendant Arthur A. Flakoll be and is sustained without leave to amend on the ground that the Complaint fails to state facts sufficient to constitute a cause of action against said defendant in that all alleged causes of action are barred by applicable statutes of limitations.

DATED: January 8, 1981

Gerald J. Lewis
Judge of the Superior Court

APPROVED AS TO FORM:

GERALD J. LEWIS

GEORGE COMROE, Esq.
Attorney for Plaintiffs

DONALD L. CLARK, County Counsel,
County of San Diego
Lloyd M. Harmon Jr., Chief Deputy

By C. LARRY DAVIS, Deputy

355 County Administration Center, San Diego, Ca 92101
236-3651 3660

Attorneys for Defendants Arthur A. Flakoll and County of San Diego

FILED
Robert D. Zumwalt, Clerk
JAN 8 1981
BY RAMON MAY
DEPUTY

86

In The Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

No. 457419

WAYNE L. ARMSTRONG, et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

This matter came on regularly for hearing before this court on Wednesday, December 17, 1980, in the courtroom of Department 17, Judge Gerald Lewis, presiding, pursuant to the demurrer of defendant Arthur A. Flakoll. George Comroe appeared on behalf of, and as attorney of record for, plaintiffs. C. Larry Davis, Deputy County Counsel, appeared on behalf of, and as attorney of record for, defendant Arthur A. Flakoll. Jeffrey T. Miller, Deputy Attorney General, appeared on behalf of, and as attorney of record for, defendant State of California. Defendant Arthur A. Flakoll and plaintiffs having submitted points and authorities in support of their respective positions, oral argument having been made, the matter having been submitted, and proof made to the satisfaction of the court and good cause appearing,

CLD:eld
80-9441
1/5/81

The court having considered the Points and Authorities filed by the respective parties, having heard oral argument by the respective party, and having accepted the representation by plaintiffs of their inability to plead any facts barring or tolling the applicable statutes of limitation, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the demurrer of Defendants State of California and Sonoma State Home is sustained, without leave to amend, and that the entire action be dismissed as to Defendants State of California and Sonoma State Home, with prejudice.

DATED: JAN 21 1981

Gerald J. Lewis
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

GEORGE COMROE, Esquire

GERALD J. LEWIS

/

/

/

COURT PAPER
STATE OF CALIFORNIA
STD 113 (REV 8 72)

lent concealment by defendants hindered his acquiring sufficient facts to put him on inquiry of the existence of any cause of action against defendants. Indeed, "[m]ere ignorance, not induced by fraud, of the existence of facts constituting a cause of action does not prevent the running of the statute of limitations. [Citation.]" (Baker v. Beech Aircraft Corp., supra, 39 Cal.App.3d 315, 321.) Finally, Raymond fails to allege how he was prevented from vindicating his own rights, as the facts relating to his treatment at the various institutions were known to him and he was free to seek counsel during the three decades before doing so.

Disposition:

Judgment affirmed.

Work
WORK, J.

WE CONCUR:

Brown
BROWN, P.J.

COLOGNE, J.

I, KEENAN G. CASADY, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby certify that the preceding and annexed is a true and correct copy of Opinion as shown by the records of my office.

I WITNESS my hand and the Seal of the Court this 25 day of February A.D. 19 83

KEENAN G. CASADY, Clerk

By Linda Deputy Clerk

ment suffered by Wayne, he returned to the Sonoma State Home and sought records and information, which were refused. He also sought information from the County of San Diego, but was also refused any information or records on the basis of confidentiality. A newspaper reporter then managed to obtain some newspaper clippings and suggested to Raymond that he contact an attorney in New York. Raymond did so and the attorney instructed him on how to obtain the records, which were made available after proper demand. "Only then was it learned by Plaintiffs that Wayne and Ellis . . . had been sterilized." Raymond filed suit on April 15, 1980.

The most crucial flaw in plaintiffs' analysis regarding estoppel and the tolling of the statute of limitations is the assumption this matter is completely familial in character. To the contrary, each cause of action is personal ... each plaintiff, based upon individual and specific mistreatment suffered by each. No suggested facts even hint at fraudulent concealment to estop defendants from raising the statute of limitations to bar the personal claims of Ellis, Elmer and Wayne. Moreover, regarding Raymond, his proffered facts fail to explain away the passage of the admitted "extended period of time" after the location of his father and his ultimate trip to New York in 1979. Further, he fails to establish how fraudu-

could not have been discovered at an earlier date. [Citation.]" (Baker v. Beech Aircraft Corp., supra, 39 Cal.App.3d 315, 321.)

Discussion:

Plaintiffs concede their original pleading allegations were inadequate and conclusory.[2] They now claim they can allege the following pertinent facts: After escaping from Latuna Forestry Camp in late 1949, Raymond became a criminal and was imprisoned during the 1950's and again from 1962 to 1968. While in custody, he was denied access to records and was totally ignorant of any rights he may have against defendants. Upon his release in 1968, he attempted to contact his family, even though the defendants had told him both his parents were dead. After locating his father, he was told he had brothers. "For an extended period of time, . . . Raymond . . . did not believe that he did have brothers in that the physical descriptions and their life styles did not match his own at all, and he could not conceive of them as brother. Ultimately, he came to believe his father and, in 1979, journeyed to New York State where he talked to Wayne . . . ." Upon learning of the treat-

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[2]They had alleged "the behavior of defendants was unreasonable, arbitrary, malicious and in bad faith; that defendants fraudulently and deliberately concealed the true nature, extent, and significance of their actions; and fraudulently concealed from plaintiffs that their actions were unlawful."

defendant, "having by fraud or deceit concealed material facts and by misrepresentations hindered the plaintiff from bringing an action within the statutory period, . . . from taking advantage of his own wrong." (Pashley v. Pacific Elec. Ry. Co., 25 Cal.2d 226, 231; Baker v. Beech Aircraft Corp., 39 Cal.App.3d 315, 323; Bowman v. McPheeters, 77 Cal.App.2d 795, 799.) "[A]ctual fraud in the technical sense, bad faith or intent to mislead are not essential to the creation of an estoppel, but it is sufficient that the defendant made misrepresentations or so conducted himself that he misled a party, who acted thereon in good faith, to the extent that such party failed to commence the action within the statutory period; a party has a reasonable time in which to bring his action after the estoppel has expired, not exceeding the period of limitation imposed by the statute for commencing the action . . . ." (Estate of Pieper, 224 Cal.App.2d 670, 690; County of Santa Clara v. Vargas, 71 Cal.App.3d 510, 524.) In order to establish fraudulent concealment, the complaint must clearly and unequivocally allege: "(1) when the fraud was discovered; (2) the circumstances under which it was discovered; and (3) that the plaintiff was not at fault for failing to discover it or had no actual presumptive knowledge of fact sufficient to put him on inquiry. [Citation.] In urging lack of means of obtaining knowledge, it must be shown that in the exercise of reasonable diligence the facts

an estoppel have been established and, "in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (City of Long Beach v. Mansell, 3 Cal.3d 462, 496-497; City of Fresno v. California Highway Com., 118 Cal.App.3d 687, 697; Chaplis v. County of Monterey, 97 Cal.App.3d 249, 258.) However, an estoppel will not be raised against a governmental entity if the result will nullify a strong rule of policy adopted for the benefit of the public. (State of California v. Superior Court (Fogerty), 29 Cal.3d 240, 244; County of Los Angeles v. Berk, 26 Cal.3d 201, 222; City of Long Beach v. Mansell, supra, at p. 493.)

> "Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be appraised of the facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (Driscoll v. City of Los Angeles, 67 Cal.2d 297, 305; State of California v. Superior Court (Fogerty), supra, 29 Cal.3d 240, 244, fn. 2; City of Long Beach v. Mansell, supra, 3 Cal.3d 462, 489; Taper v. City of Long Beach, 129 Cal.App.3d 590, 607; Los Angeles County Flood Control Dist. v. Mindlin, 106 Cal.App.3d 698, 709.)

The basis of the doctrine of fraudulent concealment employed to toll the statute of limitations is to prevent a

on the pleadings. Rather, they urge their counsel had no authority to agree to the trial court's ruling without leave to amend and, in fact, they can state facts sufficient to raise an equitable estoppel and toll the respective statutes of limitations. Even if we ignore plaintiffs' counsel's representations to the trial court and assume his conduct does not present an obstacle for them to overcome on appeal, their proffered facts do not suggest they can amend their complaint to avoid the statute of limitations bar. They do not show the trial court abused its discretion.[1]

Estoppel:

A governmental entity may be equitably estopped in the same manner as a private party when the elements necessary to such

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[1]There is no dispute on appeal regarding the proper statute of limitations for the various actions contained within the complaint. Claims under 42 U.S.C. §§ 1983 and 1985 are governed by Code of Civil Procedure section 338, subd. (1) providing for a three-year limitation upon a liability created by statute. (Bradshaw v. Zoological Soc. of San Diego (9th Cir. 1978) 569 F.2d 1066, 1068; Briley v. State of Cal. (9th Cir. 1977) 564 F.2d 849, 854; Lambert v. Conrad (9th Cir. 1962) 308 F.2d 571.) Claims under 42 U.S.C. § 1986 are expressly governed by a one-year period of limitations set forth within the statute itself. Code of Civil Procedure section 343, providing for a four-year period of limitation, is the appropriate statute of limitations for causes of action arising directly under the United States Constitution. (Marshall v. Kleppe (9th Cir. 1980) 637 F.2d 1217, 1222-1224; see contra De Malherbe v. Intern. U. of Elevator Constructors (N.D.Cal. 1978) 449 F.Supp. 1335, 1350-1351.) Likewise, direct claims under the California Constitution are governed by the four-year period of limitations set forth in Code of Civil Procedure section 343. (Compare contra De Malherbe v. Intern. U. of Elevator Constructors, supra, at p. 1350.)

granted the motion for judgment on the pleadings without leave to amend.

Standards Governing Our Appellate Review

"[A] general demurrer admits the truth of all material factual allegations in the complaint . . . ." (Alcorn v. Anbro Engineering, Inc., 2 Cal.3d 493, 496.) Whether plaintiff can prove these allegations is not of our concern; for, "plaintiff need only plead facts showing that he may be entitled to some relief [citation.]." (Ibid.) The allegations are to be liberally construed with a view to obtaining substantial justice between the parties. (King v. Central Bank, 18 Cal.3d 840, 843; see Gonzales v. City of San Diego, 130 Cal.App.3d 882, 884; Keyes v. Santa Clara Valley Water Dist., 128 Cal.App.3d 882, 885.)

> "'[I]t is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citation.] . . . However, the burden is on the plaintiff to demonstrate that the trial court abused its discretion. [Citations.] Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading. [Citation.]'" (Goodman v. Kennedy, 18 Cal.3d 335, 349, quoting from Cooper v. Leslie Salt Co., 70 Cal.2d 627, 636; see Keyes v. Santa Clara Valley Water Dist., supra, at p. 885.)

THE ACTIONS ARE TIME-BARRED

The Armstrongs do not contend the trial court erred in sustaining the demurrers and granting the motion for judgment

the defendants' failure to adequately instruct and educate him caused him to escape the forestry camp October 21, 1949, and enter a life of crime.

On April 15, 1980, the Armstrongs, collectively, filed this action alleging violations of various federal civil rights statutes (42 U.S.C. §§ 1983, 1985 and 1986), the Fourth and Eighth Amendments of the United States Constitution, and various provisions of the California Constitution (art. I, §§ 1 (inalienable rights), 13 (searches and seizures) and 17 (cruel and unusual punishment)). In essence, they allege defendants violated their civil rights while they were minors and wards of the court. The defendants demurred to the complaint as time-barred and failing to state a cause of action. The county also moved for judgment on the pleadings.

At the hearing, the trial court's tentative ruling was to sustain the demurrers and grant the motion for judgment on the pleadings with leave to amend due to the statute of limitations problem, suggesting plaintiffs could try to plead around the statute. Plaintiffs' counsel stated there was no reason to give leave to amend because he could not do so. However, he argued the statute of limitations was not inflexible and where the nature of the wrong was so flagrant public policy dictated the statute of limitations be cast aside so as not to defeat the action. The trial court then sustained the demurrers and

can be amended to state a cause of action not barred by the statute of limitations. They fail.

Factual and Procedural Background

On December 27, 1935, Raymond, Ellis, Elmer and Wayne Armstrong were taken into protective custody after their mother died and their father absconded. Wayne was born May 21, 1931; Elmer and Ellis, twins, were born June 20, 1933; and Raymond was born February 22, 1935. In February 1936, they were made wards of the court and placed in foster homes for the next three years. Ellis and Elmer were placed in the Ruth Lipps School for Mentally Retarded Children November 17, 1939, where they were subjected to outrageously cruel and brutal treatment. On January 13, 1949, Ellis was surgically sterilized. Wayne developed osteomyelitis February 28, 1939, and was placed in San Diego General Hospital until June 1, 1944, during which time he received no formal education or training. After short stays in convalescent and foster homes, he was committed to the Sonoma State Home as a defective or psychopathic delinquent, and on September 14, 1947, he was surgically sterilized. Until his discharge by county authorities and release to the care and custody of his father in 1944, Raymond was battered severely by defendants' agents and employees causing deafness in his left ear. He was redeclared a ward of the state and county on August 24, 1949, and sent to Latuna Forestry Camp. He claims

FEB 28 1983

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COURT OF APPEAL
4TH DISTRICT DIV. 1
FILED

'83 FEB 25 A11:16

KEENAN G. CASADY, CLERK

WAYNE L. ARMSTRONG, et al., Plaintiffs and Appellants, v. STATE OF CALIFORNIA, et al., Defendants and Respondents.	4 Civ. No. 24502 (Super. Ct. No. 457419)

APPEAL from a judgment of the Superior Court of San Diego County, Gerald J. Lewis, Judge. Affirmed.

Wayne, Ellis, Raymond and Elmer Armstrong appeal from a judgment of dismissal after the trial court sustained defendants' (State of California, County of San Diego, Sonoma State Home, Ruth Lipps School for Mentally Retarded Children, et al.) demurrer without leave to amend to their complaint seeking damages for alleged violations of civil and constitutional rights. The Armstrongs contend their trial counsel exceeded his authority by agreeing to the sustaining of the demurrer without leave to amend, and attempt to show how the complaint

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

Division One

ARMSTRONG, ET AL. V. STATE OF CALIFORNIA, ET AL.

4 Civil 24502
San Diego County No. 457419

ENTERED

APR 28 1983

1439 083

Judgment Book Pg

REMITTITUR TO COUNTY CLERK

I, KEENAN G. CASADY, Clerk of the Court of Appeal, Fourth Appellate District, State of California, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on February 25, 1983 and this opinion or decision has now become final (California Rules of Court, rule 25). Judgment affirmed.

Respondent(s) to recover costs on appeal.

Witness my hand and seal of the Court this 27th day of April, 1983.

Keenan G. Casady, Clerk

By: Gale Ondler
Gale Ondler, Deputy Clerk

Copy of Remittitur ONLY to:

David N. Aitken, Esq.
303 "A" Street, Suite 403
San Diego, CA 92101

Jeffrey T. Miller, Esq.
Deputy Attorney General
110 West "A" St., Suite 700
San Diego, CA 92101

WAYNE L. ARMSTRONG, et al., vs
STATE OF CALIFORNIA, SONOMA STATE HOME, et al.
457419

No.

RECEIVED FROM THE COUNTY CLERK:

Clerk's Transcripts.....ONE.....Volumes
Reporter's Transcripts.....ONE.....Volumes

JUN 14 1982

DATE

Civil 24502

COURT OF APPEALS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Robert D. Zumwalt, Clerk

JUN 1 1982

P. Fisher, DEPUTY

WAYNE L. ARMSTRONG, et al.,

Plaintiffs and Appellants

vs

STATE OF CALIFORNIA, SONOMA STATE HOME, et al.,

Defendants and Respondents

No. 457419

NOTICE OF COMPLETION OF TRANSCRIPT(S) ON APPEAL (RULE 8(a))

TO:

WAYNE L. ARMSTRONG
3444 Gardens Avenue, #2
Los Angeles, CA 90039

GEORGE DUKMEJIAN, Attorney General
JEFFREY T. MILLER
110 W. "A" Street, Suite 700
San Diego, CA 92101

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the Clerk's and Reporter's Transcript(s) on appeal in the above entitled action has been completed and that you have ten days after the mailing of this notice within which to file a request for correction of such transcript(s). If no request for correction is filed within such time, the Clerk will certify the record as correct.

The transcript(s) will be available for your inspection in the office of the County Clerk, Appeals Section.

DATED June 1, 1982

ROBERT D. ZUMWALT, County Clerk

By Pamela Fisher, Deputy

Pamela Fisher

CERTIFICATE OF MAILING

I, ROBERT D. ZUMWALT, Clerk of the Superior Court, do hereby certify that on the date shown below, at San Diego, California, I placed a true copy of the above Notice of Completion of Transcripts on Appeal in a separate envelope addressed to each addressee as listed above and each envelope was then sealed and deposited in the mail with postage fully prepaid.

DATED June 1, 1982

ROBERT D. ZUMWALT, County Clerk

By Pamela Fisher, Deputy

Pamela Fisher

FORM 338 Co. Ct. (6-78)

TO: ACCOUNTING FROM: APPEALS DATE: June 1, 1982

Re: No. 457419 WAYNE L. ARMSTRONG, et al, vs STATE OF CALIFORNIA, SONOMA STATE HOME, et al

On February 9, 1982, $ 108.20 was deposited in the Clerk's Trust Fund for preparation of the record on appeal. Please disburse as follows:

$ 16.80 to CYNTHIA FUENTES, COURT REPORTER

$ 91.40 to GENERAL FUND

$ _____ to _____

$ _____ to _____

$ _____ to _____

$ _____ to _____

$ _____ to _____

Affidavits issued.

SIGNED: Pamela Fisher, Appeals Clerk

DM-33463
RK 5/20/82

NAME AND ADDRESS OF ATTORNEY	TELEPHONE NO.	For Court use only:
		MAY 11 1982 A. BERNSTEIN Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

(PLAINTIFF) (PETITIONER)
Wayne L. Armstrong, et al.

(DEFENDANT) (RESPONDENT)
State of California, et al.

DECLARATION AND ORDER FOR PAYMENT OF TRUST FUNDS

CASE NUMBER – PARCEL NUMBER
Case No. 457419

DECLARATION

I, Cynthia H. Fuentes, Attorney at Law, Official Reporter do declare that the sum of $16.80 is presently due and owing to me by reason of: appeal transcript

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date: May 7, 1982

Cynthia H. Fuentes
Signature

VERIFICATION

I certify that the sum requested above is on deposit in the Clerk's Trust fund.

ROBERT D. ZUMWALT, County Clerk

Date: ~~May 7, 1982~~ MAY 11 1982

By _____
Deputy

ACCOUNTING

ORDER

It appearing that the sum of $16.80 MAY 21 1982 is justly due and owing to the above claimant, it is hereby ordered that the San Diego County Clerk cause the County Auditor to draw and deliver a warrant on the County Treasurer for such sum in favor of:

(Name) Cynthia H. Fuentes, Court Reporter

(Address) P.O. Box 2724, San Diego, Calif. 92112

Date: MAY 11 1982

Gilbert Harrison
Judge of the Superior Court

DECLARATION AND ORDER FOR PAYMENT OF TRUST FUNDS
Note: Submit these forms in an original and two copies

Form 180 Co Clk (Rev 2 82)

COUNTY OF SAN DIEGO
DEPARTMENTAL CORRESPONDENCE

DATE: MARCH 27, 1981

TO: CYNTHIA FUENTES

FROM: APPEALS

SUBJECT: 457419

WAYNE L. ARMSTRONG vs STATE OF C[redacted]

MAY WE PLEASE HAVE AN ESTIMATE FOR AN ORIGINAL AND ONE COPY OF ~~THE MINUTES~~ OF DECEMBER 17, 1980 in the above.

PLEASE ACKNOWLEDGE AND THANKS MUCH.

PHYLLIS

2000

REPLY TO: DATE

FORM 112

SENDER - REMOVE THIS PART AS YOUR FILE COPY

Case in appeals

FILED
MAR 8 1982
ROBERT D. ZUMWALT, Clerk
BY _____ DEPUTY

457419

RECEIVED $118.20 ($108.20 for the filing fee and a $10.00 service charge) TO REPLACE DISHONORED CHECK RECEIVED FROM RAYMOND F. ARMSTRONG AS A FILING FEE.

JO GASTELLUM
ACCOUNTING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

FILED
FEB 4 1982
D. WAGNER, Deputy

WAYNE L. ARMSTRONG
RAYMOND L. ARMSTRONG
ELLIS ARMSTRONG AND
ELMER ARMSTRONG

vs

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

No. 457419

NOTICE RE FEE FOR CLERK'S AND REPORTER'S TRANSCRIPT ON APPEAL

I 36 457419 108.20 MO
709 2160 2/09/82 108.20 TL

TO:

RAYMOND L. ARMSTRONG & Wayne L. Armstrong
Attorney In Pro Per
3444 Gardens Avenue # 2
Los Angeles, Ca 90039

APPELLANT:

Appellant's fee for preparation and certifying original and one copy of the Record on Appeal in the above entitled action is:

Reporter's Transcript: $ 20.00
Clerk's Transcript: $ 88.20
TOTAL $ 108.20

Deposit of above amount due no later than February 16, 1982. (Rule 5(c) California Rules of Court).

RESPONDENT:

If Respondent has requested exhibits, declarations or affidavits to be copied, cost to have same included in the record is $ n/a. (California Rules of Court, 5(a) (c))

If deposits are made, transcripts will be prepared and notification given upon their completion.

Checks to be made payable to "County Clerk".

DATE FEBRUARY 4, 1982

ROBERT D. ZUMWALT, County Clerk

By D. Wagner Deputy

CERTIFICATE OF MAILING

I, ROBERT D. ZUMWALT, Clerk of the Superior Court, do hereby certify that on the date shown below, at San Diego, California, I placed a true copy of the above Notice Re Fee For Clerk's and Reporter's Transcript on Appeal in a separate envelope addressed to each addressee as listed above and each envelope was then sealed and deposited in the mail with the postage fully prepaid.

DATE February 4, 1982

ROBERT D. ZUMWALT, County Clerk

By D. Wagner Deputy

FORM 333 Co. Crk. 10-70

104

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)
MARC CREIGHTON BLOCK
17161 Goldenwest St. #C
Huntington Beach, CA 92647
714 848 4777

ATTORNEY(S) FOR Plaintiff

ATTORNEY BAR # 79788

Robert D. Timmerman, Clerk
JAN 27 1982
By P. PHELAN, DEPUTY

JAN 26 1982
By Clerk
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ~~ORANGE~~ SAN DIEGO

Wayne L Armstrong et, al,
PLAINTIFF(S)

vs

State of Calif, ET, al,
DEFENDANT(S)

CASE NUMBER
24502
S.C.# 457419

SUBSTITUTION OF ATTORNEY

(Plaintiff–, Defendant–, Cross-Complainant–, Cross-Defendant–, Petitioner–, Respondent–)

Plaintiff, WAYNE L. ARMSTRONG hereby substitutes

WAYNE L. ARMSTRONG, in pro per

(address) 3444 Gardens Ave. #2, Los Angeles, CA 90039

(phone number) ..... as attorney(s) of record in place and stead of

~~MARC CREIGHTON BLOCK, 17161 Goldenwest St. #C, Huntington Beach, CA 92647~~

Dated: November 19, 1981

Raymond L Armstrong
RAYMOND L. ARMSTRONG (Signature of Party)
3444 Gardens Ave #2.
Los Angeles, Ca. 90039

I consent to the above substitution

Dated: 1-20-82

Marc Creighton Block
(Signature of Present Attorney)

Above substitution accepted

Dated: November 19, 1981

Raymond L Armstrong
(Signature of New Attorney)

Notice must be served pursuant to Sec. 285 C.C.P.

FO182-643 (2/80)

SUBSTITUTION OF ATTORNEY

MAR 27 1981

(VERIFICATION - 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA,
County of _____ } ss.

I, the undersigned, say: I am the _____

_____

_____

in the above entitled action; I have read the foregoing _____

_____

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

_____

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on _____ *(date)* *at* _____ *(place)*, *California*

_____
(Signature)

(PROOF OF SERVICE BY MAIL - 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA
COUNTY OF ORANGE } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:

17161 Goldenwest, Suite C, Huntington Beach, CA 92647

On March 26, 19 81 *I served the within* APPELLANTS' NOTICE TO PREPARE REPORTER'S AND CLERK'S TRANSCRIPTS AND DESIGNATION OF CONTENTS THEREOF [CAL.RULES OF CT., RULES 4(a), (b), 5(a)]

on the INTERESTED PARTIES

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at HUNTINGTON BEACH, CA *addressed as follows:*

C. Larry Davis, Deputy County Counsel
DONALD L. CLARK, COUNTY COUNSEL
355 County Administration Center
San Diego, CA 92101

Jeffrey T. Miller, DEPUTY ATTORNEY GENERAL
GEORGE DEUKMEJIAN, ATTORNEY GENERAL
110 West "A" Street, Suite 700
San Diego, CA 92101

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.*

Executed on March 26, 1981, *(date)* *at* Huntington Beach *(place)*, *California*

A. W. Schweers
A.W. SCHWEERS *Signature*

** Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.*

WOLCOTT'S 811P Rev 2.76

to Amend and Granting Motion for Judgment on the Pleadings Without Leave to Amend, dated January 26, 1981, San Diego County;

2 14. State of California's Order Sustaining Demurrer Without Leave to Amend and Judgment Dismissal Thereon;

/ 15. County of San Diego's Judgment of Dismissal After Order Sustaining Demurrer Without Leave to Amend, Filed January 28, 1981;

/ 16. County of San Diego's Judgment of Dismissal After Order Granting Motion for Judgment on the Pleadings Without Leave to Amend;

2 17. Clerk's Notice of Entry of Judgment dated January 29, 1981, Book 1329, Page 263;

2 18. Clerk's Notice of Entry of Judgment dated January 29, 1981, Book 1329, Page 264.

DATED: March 26, 1981.

MARC CREIGHTON BLOCK
Counsel for Plaintiffs/Appellants.

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MARC CREIGHTON BLOCK
Counsel for Plaintiffs/Appellants.